

**Planning application APP/2019/0155 – land west of Red Lees Road, Cliviger**

**REPORT TO FULL COUNCIL**



<b>DATE</b>	<b>16/10/2019</b>
<b>PORTFOLIO</b>	<b>Council Decision</b>
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**PURPOSE**

1. To introduce the report for the planning application APP/2019/0155 which is referred to the Full Council from the Development Control (DC) Committee (Appendix 2).
2. To seek a determination of the planning application, reference APP/2019/0155.

**DC COMMITTEE RESOLUTION**

3. *Minute 31. APP/2019/0155 -Land to the West Red Lees Road, Burnley*

*Minutes:*

*Residential development for the erection 129 dwellings including means of access, areas of public open space and all associated works. The proposal affects Public Footpath Nos. 88, 89 and 90 and involves the diversion of Public Footpath Nos. 89 and 90.*

*The Committee was advised by the Senior Solicitor prior to the vote on the resolution to refuse that the committee would not have delegated authority to pass such a resolution as this would be a decision that was substantially contrary to the Local Plan and that the application would therefore have to be determined by Full Council.*

*Decision:*

*The resolution to refuse planning permission was carried and the reasons provided were: the application did not meet the requirements of Policies*

*SP1 (Sustainability) and SP5 (Development Quality and Sustainability) of Burnley's Local Plan (2018).*

*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. Delegate authority to the Head of Housing and Development Control to approve the development subject to notification from the Secretary of State that they will not intervene in the decision and the completion of a s106 Agreement to secure contributions towards education provision and affordable housing and to the following conditions. Conditions 1 – 34 were originally set out in the Late Correspondence to the Development Control Committee (Appendix 3). There have been minor updates to Conditions 17., 21., 26. and 33 to reflect updates provided by the developer. Condition 35. was notified verbally to the Committee at the meeting of 21<sup>st</sup> August 2019.

Conditions:

1. The development must be begun within three years of the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans listed on this notice below.
3. The external materials of construction to be used on the walls and roofs of the development shall be in accordance with the Materials Layout on drawing no. 18132/1002RevL unless any variation is otherwise previously agreed in writing by the Local Planning Authority.
4. Details of surfacing materials to be used on the estate roads, driveways and parking spaces shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of built development. The development shall thereafter only be carried out in accordance with the approved details.
5. All planting, seeding or turfing comprised in the approved details of landscaping set out on the approved Landscape Masterplan (drawing number P.1064.18.13RevA) and planting plans on sheets 1-5 (drawing number P.1064.18.11 RevA) together with any variations to this agreed in association with condition 6 below, shall be carried out in the first planting and seeding seasons following the first occupation of any of the dwellings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased

shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written approval to any variation.

6. Prior to the commencement of built development, a Biodiversity Mitigation Plan to provide further measures for mitigating against the loss of biodiversity, including details of nesting boxes across the site and in domestic gardens and details of how these will be maintained and managed in the future to secure long term benefits for biodiversity, shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be carried out within the first planting season following the completion of the development or following the first occupancy of any dwelling, whichever is the sooner; or, in respect of bird boxes in domestic curtilages, prior to the first occupation of each dwelling to which that relates. The whole of the site shall be maintained and managed in accordance with the approved Biodiversity Mitigation Plan at all times.
7. Prior to the first occupation of any dwelling, a landscape and open space management plan, including long term design objectives, management responsibilities, maintenance schedules (including replacement of equipment and replacement planting) and a programme of implementation, for all landscape areas, play areas and public open space, other than small, privately owned domestic gardens, shall be submitted to and approved in writing by the Local Planning Authority. The landscape and open space management plan shall be carried out and adhered to as approved in perpetuity.
8. The new estate road and access between the site and Red Lees Road shall be constructed in accordance with the Lancashire County Council Specification for Construction of Estate Roads to at least base course level before any development, other than demolition and site clearance, takes place and shall thereafter be constructed to at least base course level within that each successive phase prior to development being commenced in that phase in accordance with the approved Route of Build Plan (drawing number RLRC/ROB/01RevC) unless any variation to this is first approved in writing by the Local Planning Authority.
9. Prior to the commencement of development, a scheme for the construction of the site access and associated off-site works of highway improvement broadly in accordance with the General Arrangement Plan (drawing number 2661-F01RevD) prepared on behalf of the applicant by Croft Transport Planning and Design, shall be submitted to and approved in writing by the Local Planning Authority.
10. No dwelling shall be first occupied until the approved scheme referred to in condition 9 above has been constructed and completed in accordance with the scheme details.
11. No dwelling shall be first occupied unless and until its associated car parking has been constructed, drained, surfaced and is available for use in accordance with the approved plans. The car parking spaces associated with

each dwelling shall thereafter be retained for the purposes of car parking at all times.

12. The pedestrian links between the development and Red Lees Road as indicated on the approved plans, shall be constructed and available for use prior to any dwelling being occupied within the phase to which each pedestrian link relates, in accordance with detailed specifications that shall include sections, gradients, surfacing materials and details of lighting (the latter relates to the pedestrian path at the north end of the site) which shall be previously submitted to and approved in writing by the Local Planning Authority. The pedestrian links shall remain open and available for use at all times thereafter.
13. No built development shall be commenced until the engineering, drainage, street lighting and constructional details of the proposed estate roads have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be constructed in accordance with the approved details.
14. For the full period of construction, facilities shall be available on site for the cleaning of the wheels of vehicles leaving the site and such equipment shall be used as necessary to prevent mud and stones being carried onto the highway. The roads adjacent to the site shall be mechanically swept as required during the full construction period.
15. No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
  - i) the parking of vehicles of site operatives and visitors;
  - ii) loading and unloading of plant and materials;
  - iii) storage of plant and materials used in constructing the development;
  - iv) the erection and maintenance of security hoarding;
  - v) measures to control the emission of dust and dirt during construction;
  - vi) wheel washing facilities;
  - vii) details of working hour;
  - viii) contact details for the site manager; and,
  - ix) routing of delivery vehicles to/from the site.
16. Unless otherwise approved in writing by the Local Planning Authority, all works and ancillary operations in connection with the construction of the development, including the use of any equipment or deliveries to the site, shall be carried out only between 0800 hours and 1800 hours on Mondays to Fridays and between 0800 hours and 1300 hours on Saturdays and at no time on Sundays, Bank Holidays or Public Holidays. Where permission is sought for works to be carried out outside the hours stated, applications in writing must be made with at least seven days' notice to the Local Planning Authority.
17. No dwelling shall be first occupied until it has been provided with an electric car charging point which uses a three-pin 13-amp electrical socket in a

suitable position to enable the recharging of an electric vehicle using a 3m length cable, in accordance with drawing number RLR/VCP/01RevA.

18. Prior to the commencement of the development the archaeological field investigations detailed in the submitted and approved Written Scheme of Investigation (WSI) for an Archaeological Evaluation (prepared by Wardell Armstrong, reference GM10245, RPT-0003 Version (0.1), dated October 2018) shall be carried out in accordance with the methodology set out in the WSI. The aim of the investigation is to establish the presence or absence of archaeological remains and their nature, date, extent and significance. A report on the work undertaken, the results of that work and the conclusions drawn from them shall be prepared and submitted to the Local Planning Authority. If archaeological remains are encountered then a subsequent phase of impact mitigation and a phase of appropriate analysis, reporting and publication shall be developed and a further Written Scheme of Investigation submitted to and agreed with the Local Planning Authority and implemented before development commences. All archaeological works shall be undertaken by an appropriately qualified and experienced professional archaeological contractor bound by the standards and guidance set out by the Chartered Institute for Archaeologists. The development shall be carried out in accordance with the agreed details.
19. Prior to the commencement of built development, details of the design and implementation of a surface water sustainable drainage scheme, based on sustainable drainage principles, and including a restricted rate of discharge of surface water and a timetable for implementation, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall thereafter be implemented and completed in accordance with the approved scheme prior any dwelling being first occupied. The approved drainage scheme shall be retained at all times thereafter.
20. No dwelling shall be first occupied until details of a sustainable drainage management and maintenance plan for the lifetime of the development has been submitted to and approved in writing by the Local Planning Authority. The development shall be completed, maintained and managed at all times in accordance with the approved plan.
21. Prior to the commencement of built development, a foul water drainage scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include the following:
  - a. The location of the point of connection for foul water to the existing public sewer;
  - b. The details for foul water pumping;
  - c. Separate systems for foul and surface water; and,
  - d. Design of foul drainage to provide odour mitigation measures on Richmond Avenue that include sealed lids on the rising main demarcation chamber and the receiving manhole.

There shall be no connection to the foul sewer other than in accordance with the approved details and the approved scheme shall be carried out and

completed in accordance with the approved details prior to the first occupation of any dwelling.

22. The development hereby approved shall not be carried out otherwise than in accordance with the noise mitigation measures contained within sections 5 and 6 of the Noise Impact Assessment submitted with this application (reference REC: AC106059-1R1, dated 18 March 2019).
23. Prior to the commencement of built development a lighting plan for the street and any other non-domestic external lighting shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall:
  - a) Identify areas/features on site that are potentially sensitive to lighting for bats; and,
  - b) show how and where street lighting and other lighting will be installed and through appropriate lighting contour plans demonstrate clearly that any impacts on bats is negligible.All external lighting shall be installed in accordance with the approved lighting plan.
24. No works to trees or shrubs shall occur or any part removal of drystone walls commence between the 1st March and 31st August in any year unless a detailed bird nest survey by a suitably experienced ecologist has been carried out immediately prior to clearance and written confirmation provided that no active bird nests are present which has first been submitted to and agreed in writing by the Local Planning Authority.
25. A visitor pack for new homeowners detailing the location of the European designated South Pennines Special Protection Area and including the reason for the designation, the importance of functionally linked land and the sensitivity of both to recreational impacts and the risk of fire, shall be provided to the first occupiers of each property within the approved development.
26. The stone wall to the site's frontage shall be retained at its current height and appearance in accordance with the details indicated on the approved plans. Prior to any dwelling being first occupied the wall shall be repaired as necessary in accordance with details of a conditions survey that shall be first submitted to and approved in writing by the Local Planning Authority.
27. Prior to the first occupation of any dwelling, refuse bins and recyclable waste containers for each respective dwelling shall be provided within a concealed area of the curtilage in accordance with details on the waste Management Layout (drawing number 18132/1004RevG). The refuse and recyclable waste storage provision for each dwelling shall thereafter be retained at all times.
28. Notwithstanding the provisions of the Town and Country Planning General Permitted Development (England) Order 2015 (as amended), the garages hereby approved (including integral/attached/detached garages) shall remain available at all times for the parking of a motor vehicle and shall not be altered to provide habitable space.

29. Notwithstanding the provisions of Article 3 and Part 1 of the second schedule of the Town and Country Planning General Permitted Development (England) Order 2015 (as amended) (or any Order revoking or re-enacting that Order with or without modification), no development as specified in Class B of Part 1 of Schedule 2 of that Order shall be carried out at plots 59-71 inclusive without express planning permission first being obtained from the Local Planning Authority.
30. The proposed boundary treatments as indicated on drawing number 18121/1002RevL shall be carried out and completed within each phase of the development and shall be wholly completed prior to the occupation of any dwelling within the final phase of the development.
31. Prior to the commencement of development, a phasing plan and strategy, which shall include the timing for the provision of open space and an equipped childrens play area, shall be submitted to and approved in writing by the Local Planning Authority. The approved phasing plan and strategy shall thereafter be adhered to unless any variation is otherwise approved in writing by the Local Planning Authority.
32. Prior to the commencement of built development, details of a locally equipped area for play to be sited within the open space as indicated on the approved plans, shall be submitted to and approved in writing by the Local Planning Authority. The details shall include the specifications of equipment, layout, surfacing materials, seating and perimeter fencing. The play area shall be constructed, completed and made available for use in accordance with the approved details at a timescale to be agreed as part of the phasing plan and strategy required by condition 31.
33. The development shall be constructed in accordance with the provisions for adaptable homes as set out on the submitted M4(2) Compliant Site Layout (drawing number 18132/2000Rev A), received on 2 September 2019.
34. No development shall take place that obstructs or removes any part of the Public Footpath Nos 89 and 90 on the site unless a public footpath diversion order has first been obtained to do this.
35. Prior to the commencement of built development, the following shall be carried out, submitted and approved in writing by the Local Planning Authority:-
  1. An intrusive ground investigation with gas monitoring report in accordance with the recommendations of the Desk study and Ground Investigation report (Report no. 18MIL028/GI, dated November 2018) to further investigate contaminants affecting the site; and,
  2. a Remediation and Enabling Works Strategy, detailing the findings of the investigation, assessing the risk posed to receptors by contamination and proposing a remediation scheme, including a programme for implementation.

Remediation work shall be carried out in accordance with the approved remediation scheme and programme. Remediation work on contamination not identified on the initial investigation but found during construction work

shall be carried out in accordance with details approved in writing by the Local Planning Authority subsequent to its discovery. Evidence verifying that all remediation work has been carried out in accordance with the approved scheme as a whole or within the approved phases of the development shall be submitted to and approved in writing by the Local Planning Authority before any dwelling within that phase of the development is first occupied.

Reasons for the Conditions:

1. Required to be imposed by Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
2. To ensure the development is implemented in accordance with the approved plans and to avoid ambiguity.
3. To ensure a satisfactory appearance to the development, having regard to the character of the local area, in accordance with Policy SP5 of Burnley's Local Plan (July 2018).
4. To ensure a high quality appearance to the development, in accordance and access/parking facilities, in accordance with Policy SP5 of Burnley's Local Plan (July 2018).
5. In order that the landscaping works contribute to a satisfactory standard of completed development and its long term appearance harmonises with its surroundings, in accordance with Policy SP5 of Burnley's Local Plan (July 2018).
6. To ensure that the overall scheme provides adequate mitigation to off set the loss of habitat for wildlife, in the interests of the biodiversity of the site and of the wider area, in accordance with Policy NE1 of Burnley's Local Plan (July 2018) and the National Planning Policy Framework.
7. To ensure that these areas are appropriately managed and maintained, in the interests of the amenities of the site, in accordance with Policy HS4 of Burnley's Local Plan (July 2018).
8. To ensure that satisfactory access is provided to the site before the development hereby permitted becomes operative, in the interest of highway safety, in accordance with Policy IC1 of Burnley's Local Plan (July 2018).
9. To ensure a satisfactory means of access to and from the site to serve the needs of the development, in the interests of highway safety, in accordance with Policy IC1 of Burnley's Local Plan (July 2018). The details are required prior to the commencement of development to ensure that the details are satisfactory and can be implemented at the appropriate time and stages of the development in the interests of highway safety.



10. To ensure that new occupiers have a safe means of access to and from the site, in the interests of highway safety, in accordance with Policy IC1 of Burnley's Local Plan (July 2018).
11. To ensure adequate off-street parking, in the interests of highway safety and amenity, in accordance with Policy IC3 of Burnley's Local Plan (July 2018).
12. To ensure the site is accessible within its surroundings, in accordance with Policy IC1 of Burnley's Local Plan (July 2018).
13. To ensure these details are adequate to provide satisfactory access and amenity for the occupiers of the development, in accordance with Policy IC3 of Burnley's Local Plan (July 2018).
14. To avoid the deposit of mud or debris on the public highway, in order to protect highway safety, in accordance with Policy IC1 of Burnley's Local Plan (July 2018).
15. To ensure that the safety and amenities of occupiers of neighbouring properties and users of the local highway are satisfactorily protected, in accordance with Policies NE5 and IC1 of Burnley's Local Plan (July 2018). The Construction Management Plan is required prior to the commencement of development to ensure that the measures contained therein can be carried out at the appropriate phases of the construction period.
16. To safeguard the residential amenities of the local area, in accordance with Policy NE5 of Burnley's Local Plan (July 2018).
17. To encourage the use of electric vehicles in order to reduce emissions and protect the local air quality in accordance with Policy IC3 of Burnley's Local Plan (July 2018).
18. To ensure and safeguard the investigation and recording of matters of potential archaeological/historical importance associated with the development, in accordance with Policy HE4 of Burnley's Local Plan (July 2018). The investigation is required prior to the commencement of development to ensure that any archaeological interest can be identified and recorded prior to any work which may remove, harm or destroy any such finds.
19. To ensure the adequate drainage of the site and to reduce the risk of flooding, in accordance with Policies CC4 and CC5 of the Burnley's Local Plan (July 2018). The scheme is required prior to the commencement of development to ensure that acceptable works can be agreed before works start and can then be implemented at an appropriate stage in the development.
20. To ensure adequate and appropriate funding, responsibility and maintenance mechanisms are in place for the lifetime of the development, in order to ensure the appropriate drainage of the site and to reduce the risk of flooding, in accordance with Policies CC4 and CC5 of the Burnley's Local Plan (July 2018).

21. To ensure that the foul drainage from the site is adequate and in order to manage the risk of flooding and pollution from the public sewerage system and to ensure that there are no odours resulting from a connection to the foul sewer that would have an adverse impact on the amenity of neighbouring properties, in accordance with Policies NE5 and SP5 of Burnley's Local Plan (July 2018).
22. To ensure a satisfactory level of amenity for future occupiers of the development, in accordance with Policy SP5 of Burnley's Local Plan (July 2018).
23. To ensure that the external lighting that will result from the development has no negative impacts on any features of value to bats and other wildlife, in accordance with Policy NE1 of Burnley's Local Plan (July 2018).
24. To protect any potential nesting birds, in accordance with Section 1 of the Wildlife and Countryside Act 1981 (as amended) and Policy NE1 of Burnley's Local Plan (July 2018).
25. To mitigate against harm from increased visitor numbers to the designated site, in accordance with Policy NE1 of Burnley's Local Plan (July 2018) and the National Planning Policy Framework.
26. The stone wall is an historic boundary feature that should be retained and preserved in the interests of the character and appearance of the rural area, in accordance with Policy SP5 of Burnley's Local Plan (July 2018).
27. To ensure adequate storage for refuse and recycling waste is provided away from public views, in the interests of residential amenities, in accordance with Policy SP5 of Burnley's Local Plan (July 2018).
28. To ensure that car parking levels for each property are preserved to ensure the continued compliance with the Council's parking standards, in accordance with Policy IC3 of Burnley's Local Plan (July 2018).
29. To allow the Local Planning Authority to assess the impact of any future changes relating to the enlargement within the roof at plots 59-71 inclusive having regard to their relationship with bungalows on Richmond Avenue, in accordance with Policies SP5 and HS4 of Burnley's Local Plan.
30. To ensure a satisfactory appearance to the development from within the site and its environs, in accordance with Policy SP5 of Burnley's Local Plan (July 2018).
31. To ensure the satisfactory implementation of the proposal and the provision of amenities within the development at appropriate stages in the development, in accordance with Policy HS4 of Burnley's Local Plan (July 2018).

32. To ensure that the details of the play area to be provided to cater for the needs of the development are satisfactory, in accordance with Policy HS4 of Burnley's Local Plan (July 2018).
33. To ensure that the development provides benefits to new occupiers by the provision of adaptable homes to meet lifetime needs, in accordance with Policy HS4 of Burnley's Local Plan (July 2018).
34. To ensure that the existing public rights of way are not affected prior to the applicant gaining authority to do so through the requisite process for doing so, in accordance with Policy IC1 of Burnley's Local Plan (July 2018).
35. To ensure a safe form of development that poses no unacceptable risk of pollution to water resources or to human health, in accordance with Policy NE5 of Burnley's Local Plan (July 2018).

#### **REASONS FOR RECOMMENDATION**

5. To ensure effective decision making, taking into account the merits of the proposal, the adopted local plan 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 on this occasion due to the fact that the resolution of the DC Committee which would have been to refuse planning permission would represent a substantial departure from the adopted local plan. The Council's constitution does not give delegated authority to the DC Committee to make a decision that would be regarded as a substantial departure. The Council's solicitor and the Head of Housing and Development Control affirm that it would be a substantial departure on the basis that:
  - 1) It would be contrary to the Council's adopted strategy for delivering its housing requirement set out in Policy SP2, a significant and integral part of which is the housing allocations contained within Policy HS1. The site is allocated for residential development under Policy HS1 and the adopted local plan states that development on this site will be acceptable in principle; and,
  - 2) No material reasons have been put forward to indicate that the application would be contrary to other policies contained within the adopted local plan or that there are other material considerations that would indicate otherwise.
7. The DC Committee's resolution to refuse permission is based upon the following grounds:

#### **Reason 1 - The development is contrary to Policy SP1 of Burnley's Local Plan;**

##### Officer comments in relation to Reason 1

Whilst no specific reason for the view that the development did not accord with these policies was recorded, the concerns that Members of the Committee discussed related to the sustainability of the site, with reference to access to doctors, local schools and the impact of the amount of development on these facilities. These concerns do not fall

within the scope of Policy SP1 which is a general policy setting out a positive approach that reflects the presumption in favour of sustainable development set out in the National Planning Policy Framework. Clause 2 of Policy SP1 states that “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 explains the view that the proposed development accords with the policies of the local plan. As such, Policy SP1 indicates that the development should be approved without delay. It is relevant to consider whether there are any other material considerations which indicate otherwise (other than issues which are addressed by other specific plan policies) but no reference was made to any such matters by the Committee and the Committee in the reasons for refusal.

The issues relating to access to doctors and the overall infrastructure that supports growth is a ‘in principle’ consideration that formed part of the considerations in the making, consultation and adoption of the local plan. Policy IC4 states that development will be required to provide or contribute towards the provision of the infrastructure needed to support it but that any contribution must be:

- a) necessary to make the development acceptable in planning terms;
- b) directly related to the development; and
- c) fairly and reasonably related in scale and kind to the development.

No request for a contribution towards health facilities has been made to the Council and there is no evidence to support any view that this may be needed. Moreover, the growth that would occur from the development is planned rather than unexpected growth. The growth is expected to occur in line with the adopted local plan and through this process health providers are aware where future increases in patient numbers will occur.

In respect of local school places, the Schools Planning Team at Lancashire County Council (LCC) has requested a contribution of £609,920.52 to provide 38 primary school places and £386,962.56 to provide 16 secondary school places. LCC wishes to point out that failure to secure the whole of the contribution which in this case amounts to £996,883.08, constitutes an objection from it.

However, LCC’s policy on Infrastructure and Planning also states the following:  
*“3.5 It is likely that the District Council will, when considering the overall level of contribution necessary, take into account the effect of the total developer contribution liability incurred by the proposed development arising from all policy requirements on the proposed development’s viability. In parts of Lancashire the property market is weak and highly sensitive to land costs. This can undermine attempts to regenerate the area and to attract types of development.*

*3.6 Lancashire County Council will provide the District Council with a full response relating to the impact of the development and with any consequential requirement for developer contributions, and it will be for the District Council to consider the site viability and the overall benefits brought by the proposed development.*

*3.7 In these cases the District Council may choose to allow the development despite the impact on infrastructure or services identified, or it may reduce the scope and amount of developer contributions. This is likely to be the case where a development proposal would stimulate regeneration but is financially marginal, or where a scheme is fundamental to the District Council’s overall development strategy.”*

LCC's policy document therefore affirms that viability can be taken into account when agreeing on contributions. It should be noted that Basic Need Funding is paid to local authorities to fulfil their duty to make sure there are enough school places for children in their local area. Where developer contributions are received, then the amount of Basic Need Funding is reduced by those amounts. LCC seek developer contributions towards school places which is, in principle, in line with national policy. The National Planning Policy Framework (paragraph 34) states that 'Plans should set out the contributions expected from development' [but that] 'Such policies should not undermine the deliverability of the plan'. Policy IC4 contains a list of some appropriate matters for which contributions towards infrastructure may be applicable which includes education provision. It is expected therefore that the impact of development on school places is taken into account but not without also having regard to viability. This is acknowledged by Policy IC4 and by LCC (as referred to above).

LCC state that they would use the primary school contribution to provide additional school places at Burnley Springfield Community Primary School and would use the secondary school contribution to provide additional secondary school places at Burnley Unity College. In the event that the contribution is not used for these purposes, LCC state that they would return the sum to the developer. LCC has requested that the full version of their response is included within the report and as such, it is included in section 14. Their request for a total contribution of £996,883.08 has been taken into account alongside other contributions that are also relevant.

The assumptions of the Local Plan Viability Assessment, indexed to 2019, have been used to set a ceiling of £1.12 million on all contributions for this site. To seek contributions for affordable housing, school places or GP provision in excess of a viable threshold may prevent the site from coming forward or compromise other important policy considerations and would be contrary to the local plan and national policy. The applicant has indicated a willingness to pay contributions to the figure that has been sought (£1.12 million) and agree to the proposed split as suggested by Council officers.

Whilst the agreed figure for education that has been arrived at is £475,923 which is still a substantial contribution, this could be increased to the full amount but this would reduce the contribution for affordable housing from £644,077 to £123,116.92. The balance that has been arrived for a contribution of £475,923 for education and £644,077 for affordable housing is reasonable as it takes into account the needs of the development and plan policies as a whole. The full calculated figure for affordable housing would give rise to multiple benefits in the borough from the re-use of empty homes for affordable housing. It should also be noted that by having affordable housing off-site, it improves the overall viability of the site which allows a more substantial education contribution. Conversely, having affordable housing on the application site would reduce viability, in which case the Council could anticipate a lesser figure [than agreed] towards education.

However, should the Council come to a contrary conclusion, then Officers can agree alternative proportions through the drafting and completion of a section 106 Agreement. Informed by the Council's own viability information, it is considered that the proposal would make adequate and reasonable contributions towards the provision of affordable housing off-site to satisfy the requirements of Policy HS2 and to meet the likely need for school places in accordance with Policy IC4. In addition, off-site highway works are also to be funded by the developer. The proposed development would therefore comply with Policies SP1, HS2 and IC4.

## **Reason 2 - The development is contrary to Policy SP5 of Burnley's Local Plan;**

### Officer comments in relation to Reason 2

The concerns that Members of the Committee discussed in relation to Policy SP5 related to the density of development, the design of the scheme and the absence of renewable energy.

Firstly, in terms of the number of dwellings, this figure accords with the housing allocation in Policy HS1/8 which states that the site is acceptable for around 125 dwellings. The proposal for 129 houses is around this figure and also accords with Policy HS3 which states that at a minimum, developments should seek to achieve 25dph (dwelling per hectare). The agenda report states that the proposal would lead to a density of 26 dph which reflects a medium to low density that is lower than would be expected in more urban locations.

The agenda report explains how the development has been designed to create a transition from the rural into the urban area. Careful attention has been made to the greening of the frontage, the greening of the approach from the rural area, the use of formal frontages set back from the main road and the use of reconstituted stone with detailing with heads, sills, kneelers, bays, projecting gables and the addition of chimneys to some of the frontage properties. The agenda reports refers to some improvements that the applicant made to the design and layout of the scheme during the application process. The resultant scheme is a high quality development that is well designed, includes public open space, respects the local area, and provides good quality family housing and complies with the expectations of Policy SP5.

In respect of renewable energy, there is no specific requirement in Policy SP5 or other plan policy for the provision of renewable energy in new housing developments. Policy SP5 requires the seeking of opportunities for on-site renewable energy provision and energy efficiency measures. To address the policy, the applicant has designed fabric energy efficiency measures into the scheme and has submitted an Energy Statement to explain and justify the approach taken. It explains that the development will use fabric improvements to save energy as opposed to creating energy to compensate for less well insulated dwellings. As stated in the agenda report, the proposals will achieve a reduction of 10.21% in energy compared to building regulations compliance. This approach to saving energy is in accordance with Policy SP5 and would achieve an energy efficient development.

To conclude on this point, the proposal does comply with Policy SP5.

8. The applicant has made a further improvement to the provision of Adaptable Homes since the date of the DC Committee meeting. The applicant had previously substantially complied with Policy HS4 in respect of adaptable homes and has since the DC Committee meeting adapted a further house type to ensure that there is 100% compliance with this policy. As such, 26 dwellings (20% of total) would comply with the optional standards of part M4(2) of the Building Regulations 2010.

## FINANCIAL IMPLICATIONS AND BUDGET PROVISION

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

## POLICY IMPLICATIONS

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

## DETAILS OF CONSULTATION

11. Consultations are detailed in the agenda report to the DC Committee (Appendix 2). Details of a response from Natural England that was previously reported in Late Correspondence is copied below:

### Natural England

Natural England notes that GEMU on behalf of your authority, as competent authority, has undertaken an appropriate assessment of the proposal in accordance with Regulation 63 of the Conservation of Species and Habitats Regulations 2017 (as amended). Natural England is a statutory consultee on the appropriate assessment stage of the Habitats Regulations Assessment process.

The appropriate assessment concludes that your authority is able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites in question. Having considered the assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, Natural England advises that we concur with the assessment conclusions, providing that all mitigation measures are appropriately secured in any permission given.

*Officer comment:* A suitable condition as referred to above is included in the recommended conditions below.

12. One further letter of objection has been received from a resident on Red Lees Road on grounds which are already listed under 'Neighbour Responses' in the original agenda report (only one access and on dangerous bend, no room at the local school, inadequate sewage system, no nearby GP or dentist, difficulties for emergency services in snow, out of character).
13. In addition, one letter in support of the development has been received from a Burnley resident, stating that it would provide much needed housing in a semi-rural location; that it would be sympathetic; and that St John's primary school is a good school that is undersubscribed.

14. LCC has requested that their full response is produced in the report to Members and as

such it is provided below. This has already been referred to and commented on above.

## **Education Assessment 7<sup>th</sup> August 2019**

Lancashire County Council is responsible for the provision of school places across the 12 county districts. The county has been facing significant increases in the birth rate at the same time as capital funding from the Department for Education has been significantly reduced.

In accordance with Lancashire County Council's 'School Place Provision Strategy', the following will apply:

Where the growth in pupil numbers is directly linked to housing development and existing school places are not sufficient to accommodate the potential additional pupils that the development may yield, Lancashire County Council would seek to secure developer contributions towards additional school places. Only by securing such contributions (which, depending upon the scale of development, may also include a contribution of a school site), can Lancashire County Council mitigate against the impact upon the education infrastructure which the development may have.

This assessment shows the level of impact relevant to the following development:

### **Land to the West Red Lees Road**

#### **Pupil Yield**

Through a detailed research project carried out during 2012 LCC have established a pupil yield to be applied for the bedroom mix within a development.

Using the Rightmove database (based on Land Registry information), a cross matching exercise was undertaken to match the first occupation of a house with the relevant School Census. The research enabled LCC to ascertain the likely impact of a dwelling with 1, 2, 3, 4, or 5+ bedrooms in terms of the child yield. This enabled LCC to project the pupil yield of new houses, based on the number of bedrooms per dwelling.

LCC will seek to apply these pupil yields to our assessment, however, if bedroom information has not been provided by the developer LCC will apply the 4 bedroom yield, to provide a medium to worst case scenario. Once bedroom information is available the impact of this development will be reassessed using the yield information provided in the 'Development details' section below.

#### **Local primary schools within 2 miles of development**

When assessing the need for an education contribution from this development Lancashire County Council considers primary school provision within a 2 mile radius of the proposed site. Details of the schools relevant to this site are provided below:

<b>School Name</b>	<b>Latest Number on Roll *</b>	<b>Future Planned Net Capacity (Jan 2024) **</b>	<b>Projected Pupils by Jan 2024 ***</b>
Worsthorne Primary School	213	210	210
Burnley Brunshaw Primary School	420	420	432
Burnley St Stephen's Church Of England Voluntary Aided Primary	209	210	222



School			
Burnley Springfield Community Primary School	206	251	217
St Mary's Roman Catholic Primary School Burnley	210	210	221
St John's Church Of England Primary School Cliviger	201	210	200
Burnley St Peter's Church Of England Primary School	209	210	222
Burnley Heasandford Primary School	631	630	636
<b>Total</b>	<b>2299</b>	<b>2351</b>	<b>2360</b>

\* Latest Number on Roll (NOR) reflects the most up-to-date pupil numbers at the school. Assessments between 1<sup>st</sup> December and 31<sup>st</sup> March will use October NOR, assessments between 1<sup>st</sup> April and 31<sup>st</sup> July will use January NOR and assessments between 1<sup>st</sup> August and 30<sup>th</sup> November will use May NOR.

\*\* The net capacity figure is agreed via consultation with the schools, during September each year. The future net capacity includes any agreed capacity changes, which LCC have been informed about.

\*\*\* Based on the latest projections at the time of the assessment. Please note that the figures provided are based upon current circumstances and this position is subject to change in response to a number of factors that can affect parental preference. The figures take into account the latest available birth information, evidence of migration and also the projected pupil place demand in 5 years.

Projected places in 5 years: -9

Additional information which may provide context to the figures above has been included in the table below. This table provides year by year pupil projections for the schools affected by the development.

JAN 2020	JAN 2021	JAN 2022	JAN 2023	JAN 2024
2275	2286	2288	2294	2296

The figures above show the forecast number on roll before housing and migration is applied. Using the appropriate district's 5 year Housing Land Supply documents (or equivalent) and migration figures in 5 years' time we forecast there will be **2360** pupils in these schools.

### Development details

Number of bedrooms	Yield applied per dwelling	Number of dwellings	Primary yield for this development
1	0.01		
2	0.07		
3	0.16	52	8.32
4	0.38	77	29.26
5	0.44		
<b>Totals</b>		<b>129</b>	<b>(37.6) 38 Places</b>

### Education requirement

Latest projections for the local primary schools show there to be a shortfall of 9 places in 5

years' time. These projections take into account the current numbers of pupils in the schools, the expected take up of pupils in future years based on the local births, the expected levels of inward and outward migration based upon what is already occurring in the schools and the housing development within the local 5 year Housing Land Supply document (or equivalent), which already have planning permission.

With an expected yield of 38 places from this development the shortfall would increase to 47. Therefore, we would be seeking a contribution from the developer in respect of the full pupil yield **of this development**, i.e. 38 places.

### Local Secondary schools within 3 miles of the development

When assessing the need for an education contribution from this development Lancashire County Council considers secondary school provision within a 3 mile radius of the proposed site. Details of the schools relevant to this site are provided below:

School Name	Latest Number on Roll *	Future Planned Net Capacity (Jan 2024) **	Projected Pupils by Jan 2024 ***
Burnley Unity College	1143	1200	1305
Blessed Trinity Rc College	1277	1290	1460
Sir John Thursby Community College	1101	1125	1257
<b>Total</b>	3521	3615	4022

\* Latest Number on Roll (NOR) reflects the most up-to-date pupil numbers at the school. Assessments between 1<sup>st</sup> December and 31<sup>st</sup> March will use October NOR, assessments between 1<sup>st</sup> April and 31<sup>st</sup> July will use January NOR and assessments between 1<sup>st</sup> August and 30<sup>th</sup> November will use May NOR.

\*\* The net capacity figure is agreed via consultation with the schools, during September each year. The future net capacity includes any agreed capacity changes, which LCC have been informed about.

\*\*\* Based on the latest projections at the time of the assessment. Please note that the figures provided are based upon current circumstances and this position is subject to change in response to a number of factors that can affect parental preference. The figures take into account the latest available birth information, evidence of migration and planned housing development, to provide a 5 year projection.

Projected places in 5 years: -407

Additional information which may provide context to the figures above has been included in the table below. This table provides year by year pupil projections for the schools affected by the development.

JAN 2020	JAN 2021	JAN 2022	JAN 2023	JAN 2024
3688	3821	3906	3985	4073

The figures above show the forecast number on roll before housing and migration is applied. Using the appropriate districts 5 year Housing Land Supply documents (or equivalent) and migration figures in 5 years' time we forecast there will be **4022** pupils in these schools.

### Development details

Number of bedrooms	Yield applied per dwelling	Number of dwellings	Secondary yield for this development
1	0.00		
2	0.03		
3	0.09	52	4.68
4	0.15	77	11.55
5	0.23		
<b>Totals</b>		<b>129</b>	<b>(16.2) 16 Places</b>

### Education Requirement

Latest projections for the local secondary schools show there to be a shortfall of 407 places in 5 years' time. These projections take into account the current numbers of pupils in the schools, the expected take up of pupils in future years based on the local births, the expected levels of inward and outward migration based upon what is already occurring in the schools and the housing development within the local 5 year Housing Land Supply document, which already have planning permission.

With an expected yield of 16 places from this development the shortfall would increase to 423. Therefore, we would be seeking a contribution from the developer in respect of the full pupil yield **of this development**, i.e. 16 places.

### Summary and Final Calculations

The latest information available at this time was based upon the 2019 School Census and resulting projections.

Based upon the latest assessment, taking into account all approved applications, LCC will be seeking a contribution for 38 primary and 16 secondary school places.

Calculated at the current rates, this would result in a claim of:

Primary places:

$(£12,257 \times 0.97) \times \text{BCIS All-in Tender Price } (324 / 240) \text{ (Q1-2019/Q4-2008)}$

= £16,050.54 per place

$£16,050.54 \times 38 \text{ places} = \mathbf{£609,920.52}$

Secondary places:

$(£18,469 \times 0.97) \times \text{BCIS All-in Tender Price } (324 / 240) \text{ (Q1-2019/Q4-2008)}$

= £24,185.16 per place

$£24,185.16 \times 16 \text{ places} = \mathbf{£386,962.56}$

*This assessment represents the current position on 7<sup>th</sup> August 2019. LCC reserve the right to reassess the education requirements taking into account the latest information available.*

## **Expenditure Project**

Following an initial scoping exercise of the local schools it has been determined that Lancashire County Council intend to use the primary education contribution to provide additional primary places at Burnley Springfield Community Primary School. This is the closest primary school to the development that has space to accommodate an expansion.

It has also been determined that Lancashire County Council intend to use the secondary education contribution to provide additional secondary places at Burnley Unity College. This is the closest secondary school to the development that has space to accommodate an expansion.

Whilst the County Council have confirmed its intention to deliver projects at Burnley Springfield Community Primary School and Burnley Unity College it should be noted that this would be subject to the following:

- willingness of school governing body to expand
- suitability of site
- planning permission & compliance with Section 77 of the Schools Standards and Framework Act 1998 and Schedule 1 to the Academies Act 2010.
- consultation with local schools and the community
- parental preference at the time that the places are required
- school standards at the time that the places are required
- availability of other funding streams

Should the primary and/or secondary education contribution not be spent on the project named within this assessment, the County Council will return the entire sum to the owner. Furthermore, the County Council will ensure that sufficient local primary and secondary school places are provided to address the impact of the development at no cost to the owner.

To ensure that the approach is in line with the Community Infrastructure Levy regulations, the County Council confirms that there are 1 secured Section 106 pooled (APP/2017/0541) against Burnley Springfield Community Primary School within the district.

The County Council confirms that there are 0 secured Section 106 pooled against Burnley Unity College within the district.

## **Please Note**

- **The cost per place used in this assessment is in line with the Education Methodology at the point of assessment. However, the cost per place to be used within the s106 agreement, if this is the district's chosen method of mitigation of the development impact on school places, will be that within the Education Methodology at the point of sealing.**
- **This is the final position at: 7<sup>th</sup> August 2019. If the decision is deferred at committee a reassessment will be required.**

## **Further Information**

If the education contribution assessment identifies the need for a contribution to be provided Lancashire County Council is, in effect, objecting to the application. A developer contribution will, in most cases, overcome the objection. If a developer does not agree to payment of the requested education contribution or the local planning authority does not pursue Lancashire County Council's request on its behalf, Lancashire County Council cannot guarantee that children yielded by the development will be able to access a school place within reasonable distance from their home, so the development could be considered to be unsustainable.

Furthermore, if the planning application is approved without the required education contribution LCC would request that the local planning authority confirm how the shortfall of school places, resulting from the development, will be addressed. (Please see page 10 of the Education Contribution Methodology).

If you require any further information about the assessment process (including the current rates), in the first instance, please refer to LCC's Planning Obligations Education Methodology and supporting information at: <http://www.lancashire.gov.uk/council/planning/planning-obligations-for-developers.aspx>

#### **BACKGROUND PAPERS**

15. Application file APP/2019/0155
16. Counsel's Advice – Item 7 (Private Agenda - subject to legal and professional privilege and available to Members of Burnley Council only)

#### **FURTHER INFORMATION**

**PLEASE CONTACT: Janet Filbin**

**ALSO: Paul Gatrell**