

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

REPORT TO FULL COUNCIL



DATE	[Meeting Date]
PORTFOLIO	Council Decision
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PURPOSE

1. To update the report for the planning application APP/2019/0155 which was deferred from the preceding meeting of the Full Council on the 16th October 2019. The previous report to the Full Council contained the DC Committee Report as an Appendix. The attached report amends the original DC Committee report (from its meeting on the 21st August 2019) in order to provide a comprehensive update on the current planning application.
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.

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 was referred to the Full Council for determination 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 Full Council at its meeting on the 16th October 2019 resolved to defer the application until further notice to an extraordinary meeting to be no later than the date of the next scheduled Full Council meeting. Whilst the reason for deferral is not minuted, it is understood from comments made by Councillors that the deferral would provide an opportunity for the applicant to address the various concerns that they had raised at the meeting.
8. Subsequent to the Full Council meeting on the 16th October 2019, the applicant submitted the following changes to the proposed scheme:-
 - A reduction in the number of houses from 129 to 125 (a pair of semi-detached houses removed at the south end of the frontage onto Red Lees Road, one house removed near to the site entrance and one house removed by reducing a row of three houses to a pair of semi-detached houses at the westerly side of the site);
 - The introduction of 5no. affordable houses on the site. The tenure of these will be discount to market sale at 80% of open market value with the remainder of the affordable housing offer being met off-site by way of a contribution of £396,355 (the Council would use this sum to re-use empty homes for affordable housing);
 - Agreement to pay the full contribution of £980,832.54 towards education provision;
 - An additional 63 semi-mature trees to be planted along the three most exposed boundaries (these being Red Lees Road, the South East boundary and the South West corner);
 - A revised Energy Statement and the use of 10 No. Photovoltaic (PV) panels, to be distributed across five properties (Plots 63 to 67 - two panels per plot).

The applicant has also confirmed that they would agree to a re-dedication of the Public Footpath No.88 within the application site as Public Bridleway. These changes have been referred to in an updated Officer's report which is attached as Appendix 1.

9. The DC Committee's resolution to refuse permission is based upon two grounds (reasons) and details of these were contained within the report to the Full Council on the 16th October 2019. These are listed again below with some revisions to the Officer comments.

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. For the purposes of this application, these concerns do not, however, fall within the scope of Policy SP1. Policy SP1 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 (NPPF).

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. This was the position when the Council have previously considered the application (at the Development Control Committee on the 21st August 2019 and at the preceding Full Council meeting on the 16th October 2019) and this position is further affirmed by the changes that have been recently made (listed at paragraph 8 above). As such, Policy SP1 and the NPPF indicate that the development should be approved without delay. Whilst 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), no reference was made to any such matters by 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 and would occur gradually over a significant length of time. 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. This is not in this case therefore a valid material consideration and Policy SP1 would not support a view to the contrary.

In respect of local school places, the Schools Planning Team at Lancashire County Council (LCC) has requested a revised contribution (based on the revised scheme) of £593,869.98 to provide 37 primary school places and £386,962.56 to provide 16 secondary school places (total contribution of £980,832.54). Whilst previously the applicant had agreed to pay a contribution of £475,923 towards education, the applicant has now offered to pay the full contribution request. Lancashire County Council, being the body responsible for the provision of school places in this district, confirm that they have no objection to the proposed development.

It should be noted that the previous lower contribution offer would also have been acceptable and complied with Policy IC4 as it was based on sound viability evidence. However, agreement to pay the full contribution which will be secured through a section 106 Agreement is conclusive in the finding that the proposed development adequately caters for additional school places that will be generated by the development.

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. The responsibility for using the funds provided by the developer and providing school places would rest with Lancashire County Council.

The assumptions of the Local Plan Viability Assessment, calculated a ceiling of £1.12 million on all contributions for this site. Whilst the offer for an education contribution has risen by £504,909.54, the level of other contributions has not reduced. The development will therefore adequately contribute towards the provision of the infrastructure that is needed to support it and would comply with Policy IC4.

The concerns of the DC Committee in respect of school places and health facilities are adequately taken into account and do not raise a conflict with Policy SP1. 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 the proposal should be approved without delay.

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/gateway location and the absence of renewable energy.

The applicant has amended the application by reducing the number of dwellings from 129 to 125. The previous figure of 129 dwellings was in accordance with the housing allocation at HS1/8 which states that the site is acceptable for around 125 dwellings. However, the reduction to the exact number of dwellings as stated in Policy HS1/8 is also in accordance with the housing allocation which is necessary to make up the housing requirement (set out in Policy SP2) to be made up by site allocations (1,798 dwellings in the plan period). It also complies with Policy HS3 which states that at a minimum, developments should seek to achieve a density of 25dph (dwellings per hectare). The proposal would lead to a density of 25dph which is at the minimum level and is considered to be appropriate for this area where there is a transition from a rural to urban area. A lower density would be in conflict with this policy and would not generate the housing number for the site that is forecast to contribute to the housing requirement in Policy SP2.

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. The applicant has, since the date of the Full Council meeting on the 16th October 2019, made steps to further improve the appearance of the scheme at the gateway location by providing an additional 63 semi-mature trees to be planted along the Red Lees Road frontage and the south east and south west boundaries. The removal of two houses at the south side of the Red Lees Road frontage has also provided a low dense edge which would be obscured from the approach views (from Cliviger) by new tree planting. The proposed scheme had previously addressed the gateway transition from the rural to urban areas and these further improvements reinforce that. As such, the proposal provides a carefully designed gentle transition from countryside to town which complies with the expectations in Policy SP5.

In respect of renewable energy, this forms part of section 1 of Policy SP5 which is headed 'Energy Efficiency' which requires applicants to incorporate measures to minimise energy and water consumption, to seek opportunities for on-site energy supply from renewable and low carbon energy sources, and to seek opportunities to contribute to local and community-led renewable and low carbon energy initiatives. The Energy Statement submitted by the applicant explains that the design has focussed on building fabric improvements to save energy as opposed to creating more energy to compensate for less well insulated homes. The proposed dwellings will achieve a reduction of 10.26% in energy use compared to building regulation compliance. The report states that by concentrating on fabric improvements it is ensured that the resultant reduction in energy demand will be effective for the life of the building (approx. 60 years) as opposed to some renewables which lose efficiency quickly and are costly to maintain or replace (approx. 25 year maximum lifespan). The applicant's approach to achieving energy efficiency as a whole which is the objective of the policy is accepted and the proposal that was considered previously by the DC Committee and Full Council complied with the Energy Efficiency requirements of Policy SP5.

The applicant has since the Full Council meeting sought to make further improvements by providing 10 No. Photovoltaic (PV) panels, to be distributed across five properties (Plots 63 to 67). This further demonstrates that the applicant has sought opportunities for the on-site supply of renewable energy which represents an enhanced level of energy efficiency to that which will be provided by fabric efficiency improvements. The applicant has also looked at the potential to contribute to local and community-led renewable and low carbon initiatives and concludes that there are no local initiatives that would be suitable to connect into the site. This position is accepted. The applicant has fulfilled the expectations of Policy SP5 in respect of Energy Efficiency and the proposal would result in an energy efficient development.

10. 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

11. 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

12. 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

13. Neighbours, the Parish Council and the Burnley Civic Trust have been re-consulted on the changes that have been made to the application since the date of the Full Council meeting on the 16th October 2019. A drop in open event that was attended by Council Officers and representatives of the applicant for neighbours and Councillors was held at Burnley Town Hall on the 25th November 2019. Any further responses are reported in the agenda report. The Cliviger Parish Council are due to meet on the 6th December 2019 and would like their comments to be made known to the Council. Further comments resulting from the changes to the application are detailed in the attached agenda report to the DC Committee.

BACKGROUND PAPERS

14. Application file APP/2019/0155
15. 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

ITEM NO	
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