

**Application Recommended for Delegation to
Approve subject to s106 Agreement**
Cliviger With Worsthorne Ward

FUL/2020/0186

Town and Country Planning Act 1990
Residential development for the erection of 18 dwellings and associated works.
Land to the north of Brownside Road Worsthorne BB10 3LR

The application is before the Committee following receipt of objections.

Background:

The proposal is for full planning permission for the erection of 18 dwellings on approximately 0.76ha of land that on the western edge of Worsthorne village. The site bounds the north westerly edge of the Worsthorne Conservation Area. The 'L`Shaped piece of land consists of rough overgrown land with areas of hardstanding at its southern side closest to Brownside Road and of pasture to its north side. The land falls gently from higher land to the south east down towards the north west part of the site. The north side of the site bounds Public Footpath 12-11-17. There are trees within and on the edges of the application site that are protected by the Burnley (Brownside Road/Lennox Street) Tree Preservation Order (TPO) 2017. This protects two individual trees and six groups of trees.

The application follows a previous outline planning permission (APP/2017/0397) in June 2018 for up to 18 dwellings. The current application differs from the outline consent by the inclusion of an additional strip of frontage land to its western side to improve sight lines, by providing a new set of planning obligations and by the omission of a pedestrian/cycle link from within the site onto Lennox Street.

Proposed Site Layout



The proposed development involves the construction of an improved site access and single estate road, terminating in a hammerhead junction with two short private driveways, forming two short cul-de-sacs at the north end of the site. A new footway would be constructed along the site frontage to link to the existing footway. A mix of 11 detached houses, two pairs of semi-detached houses and a row of three terraced houses are proposed, providing a total of 10 three bedroom houses and 8 four bedroom houses. The houses are two storey and designed to reflect the traditional form of local housing and with natural coursed stone to principal elevations (render to the rear and some side elevations), stone window surrounds and detailing.

Street scenes/views of site along its western boundary



The houses at Plots 13 -15 (top row) and Plots 1-5 (bottom row) are house frontages set back from the western boundary by the internal access road. Plots 16-18 (middle row) are the rear elevation and gardens. Retained trees and new tree planting would provide filtered views of this row of houses from the approach into Worsthorne from Brownside.

The Planning Statement submitted with the application identifies that Plots 2, 3, 4 and 5 would be constructed as Lifetimes Homes. All detached properties would have an electric vehicle charging point. An Energy Statement states that a fabric first approach has been taken to achieve a 10.49% reduction in CO2 emissions.

A foul pumping station is also required to be constructed within the development in order to pump foul water to the public sewer on Brownside Road.

Relevant Policies:

Burnley's Local Plan (July 2018)

SP1 – Achieving sustainable development

SP2 – Housing requirement 2012-2032

SP4 – Development strategy

SP5 – Development quality and sustainability

HS1 (HS1/26) – Housing allocations (Lad adjacent 250 Brownside Road)

HS2 – Affordable housing provision

HS3 – Housing density and mix

HS4 – Housing developments

HE2 – Designated heritage assets

NE1 – Biodiversity and ecological networks

NE4 – Trees, hedgerows and woodland

NE5 – Environmental protection

CC4 – Development and flood risk

CC5 – Surface water management and sustainable drainage systems

IC1 – Sustainable travel

IC2 – Managing transport and travel impacts

IC3 – Car parking standards

IC4 – Infrastructure and planning contributions

Supplementary Planning Documents

Developer Contributions (Consultation version)

The National Planning Policy Framework (2019)

Site History:

12/74/0049 – Erection of detached and semi-detached bungalows. Approved.

12/77/0204 – Enf Notice – Use as a haulage and storage depot: Withdrawn

12/77/0329 – Parking of one cattle haulage truck with incidental maintenance. Approved.

12/78/0401 – Retention of brick building for use as a tool shed and for storage of spare parts. Approved.

12/80/0652 – Retention of wooden shed to garage one goods vehicle. Approved.

12/82/0475 – Retention of wooden shed to garage one cattle truck. Approved.

12/82/0620 – Erection of garage for commercial vehicles: Not determined

12/82/0650 – Outline application for the erection of a detached bungalow and garage: Not determined.

APP/2005/0197 - Proposed residential development including means of access (all other matters reserved for future approval). Refused April 2005.

APP/2006/0171 - Proposed residential development including (details of means of access) all other matters reserved for future approval. Refused April 2006. Appeal dismissed January 2007.

APP/2017/0200 -Proposed residential development up to 24 dwellings including access and associated infrastructure (all other matters reserved for future approval). Withdrawn.

APP/2017/0397 – Outline application for residential development for up to 18 dwellings including details of access (all other matters reserved for future approval). Approved June 2018.

Consultation Responses:

LCC Highways

Do not wish to raise an objection. It is expected that the access from Brownside Road and the roadway to the estate will need to be built by way of a section 278 Agreement. In order to support residents with limited mobility we would look for some improvement works to the bus stop opposite the entrance and the relocation of the stop outside 258/260 Brownside Road to the gable of Plot 1. These works will include the provision of some tactile paving and the raising of the footway and associated kerbs to allow for a step free access to the bus.

There is a known traffic issue due to the parking of vehicles on the highway to facilitate the drop off and collection of pupils from the adjacent primary school on Brownside Road. In order to alleviate this, a Traffic Regulation Order will be required to extend the No Waiting Order around both radii of the access way and along the new footway towards Burnley. Conditions are recommended to require a Construction Method Statement, to prevent deliveries before 9.30 am or after 3.00pm on school days and to require wheel washing facilities.

Lead Local Flood Authority

No objection subject to the inclusion of a condition to require the final details of the design, based on sustainable drainage principles, and implementation of an appropriate surface water sustainable drainage scheme and details of its future maintenance and management.

United Utilities

The site overlies the sandstone rock in a Groundwater Source Protection Zone 2. This forms an aquifer , abstracted at depth by United Utilities for public drinking water supply at nearby Worsthorne boreholes. The applicant should follow best practice on their use and storage of fuels, oils and chemicals, to remove the risk of causing pollution during construction. All roof water downpipes should be sealed against pollutants. No permit is required if the methods of discharge advised by UU are followed. Recommend a condition relating to the investigation and potential remediation of groundwater contamination.

The site should be drained on a separate system with foul water draining to the public sewer and surface water in the most sustainable way. The proposed drainage proposals are acceptable in principle and request a condition to ensure that the development is carried out in accordance with the submitted Foul and Surface Water Design Drawing. Also request a condition to require a drainage management and maintenance plan.

LCC Education

The projections for local primary schools show there to be 92 places available in five years` time. With an expected pupil yield of five pupils from this development, we

would not be seeking a contribution from the developer in respect of primary places. Projections for local secondary schools show there to be a shortfall of 341 places in five 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 housing development within the Five Year Housing Land Supply document which already have planning permission. With an expected yield of two places from this development, the shortfall would increase to 343. Therefore, we would be seeking a contribution from the developer in respect of the full pupil yield of this development, i.e. 2 places at 25,080.90 per place which is a total contribution request of £50,161.80.

Where the education authority identifies the need for a contribution, it is, in effect, objecting to the application. A developer contribution, including indexation will, in most cases, overcome the objection. If a developer does not agree to payment of the requested 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.

Burnley Wildlife Conservation Forum

It is reassuring that valuable specimens of trees along the boundaries of the site are indicated to be retained but query whether the silver birch at T11 (of the submitted Aboricultural Impact Assessment) which is omitted from the Landscape Layout. It is pleasing to see some mixed native hedge planting but suggest that the Cherry Laurel in the ornamental hedge is replaced as it has poor biodiversity value. A condition is required to ensure that an appointed ecologist oversees the destruction of the badger sett on the eastern boundary which has been monitored with no evidence of usage. The Bat Activity Survey did not survey the southern part of the site, including trees with bat potential and should be undertaken but whatever the findings, because of the need to remove so many mature trees on the site, the installation of bat boxes on all the retained mature trees should be a condition of any approval.

Greater Manchester Ecology Unit (GMEU)

The Ecological Appraisal updated a survey that was submitted in association with the outline approval of application (APP/2017/0397) in 2017. In 2017 GMEU had no overriding objection to the proposal but recommended conditions in association with any approval. Our comments remain broadly the same in relation to the need to secure via conditions :-

- Japanese knotweed Control and Eradication Method Statement
- Avoidance of the bird breeding season (March – August inclusive)
- Investigation prior to removal of any remaining bat boxes
- Protection and retention of trees including a black poplar. The black poplar was not noted on the recent survey, but this may be mis-identification as the 2020 survey was conducted in December when the trees were not in leaf.

In addition, the current survey updated the status of Potential Roost Features in trees and included the investigation of the single hole badger sett. This additional 2020 survey work found no bat roosting activity and no badger usage of the sett. I note the

submitted amended landscape plan and I am satisfied with the native species hedgerow specification and note that this is proposed for the western and parts of the eastern boundary. I would strongly recommend that the native species hedgerow is also specified on the Site's northern boundary adjacent to the footpath[this has now been done].

There appears to be some recommendations for other ecological enhancements (para 6.4.2), as guided by the NPPF (February 2019, para 175d.) and I would suggest that the internal boundary treatments allow for ecological permeability and that the landscape scheme or detail secured via a separate condition require the introduction of 2 integral bat boxes or 2 bird boxes.

There is no known reason to contradict the findings of the Report and I have the following recommendations for an additional condition: -

Prior to the commencement of development including any vegetation clearance, earth moving or site enabling works the whole site and 30m boundary should be resurveyed for the presence of badgers including the disused hole on the eastern boundary. A report should be submitted to the Planning Authority detailing any new evidence and any changes to usage from that submitted in the Ecological Appraisal (Simply Ecology Limited, May 2020). Any changes should be accompanied by details of the need to modify the measures identified in the Ecological Appraisal. If no changes have occurred then the hole should be closed using appropriate on-site ecological supervision as recommended at Annex D para 4.3.3 of the submitted Report.

Subject to the renewal of the previous conditions and the securing of a new condition relating to badgers the application can be forwarded to determination in respect of ecology.

Environmental Health

No objections to approval of the application, subject to inclusion of conditions 11, 12 (Construction Method Statement),13 (Construction working hours),14 (Electric Car Charging Points) and 22 (Wheel washing facilities during construction) contained within the Decision Notice for outline application, APP/2017/0397.

Greenspaces and Amenities Manager

Request a contribution of £21,700 for open space improvements to be used for improvements to the adjacent Worsthorne Recreation Ground.

East Lancashire Hospitals NHS Trust

A representation has been received to make a request for a financial contribution towards an increase in healthcare demand. The Trust states that:-

- The development will create an impact on the service delivery which will have a long term impact.
- Current bed occupancy levels are unsatisfactory and the problem will be compounded by an increase in the population which does not coincide with an increase in available bed spaces.
- Will add a further strain on the current acute healthcare system.
- The existing service delivery infrastructure for acute and planned health care is unable to meet the additional demand generated as a result of the proposed development.

- The population increase associated with the proposed development will significantly impact on service delivery and performance of the Trust until contracted activity volumes include the population increase.
- The Trust will receive no commissioner funding to meet each dwelling's healthcare demand in the first year of occupation due to the preceding year's outturn activity volume based contract.
- The developer is requested to contribute towards the cost of providing the necessary capacity for the Trust to maintain service delivery during the first year of occupation of each dwelling.
- It requests a contribution of £24,913.00 (based on 18 dwellings)

Publicity

Four letters of objection have been received from residents at Lennox Street and Brownside Road. The comments made by residents are summarised below:-

- Concerns about T2 (Black Poplar tree) in the corner of the site that overhangs our house and causes branches to fall on driveway and leaves to block gutters;
- Object to the proposed footpath/cycle link to the rear garden boundaries of nos. 10,12 and 14 Lennox Street which cause overlooking, noise and loss of privacy [the footpath and cycle link has since been removed from the proposed layout];
- Object to the use of Lennox Street to access the site by large tractors and trailers.

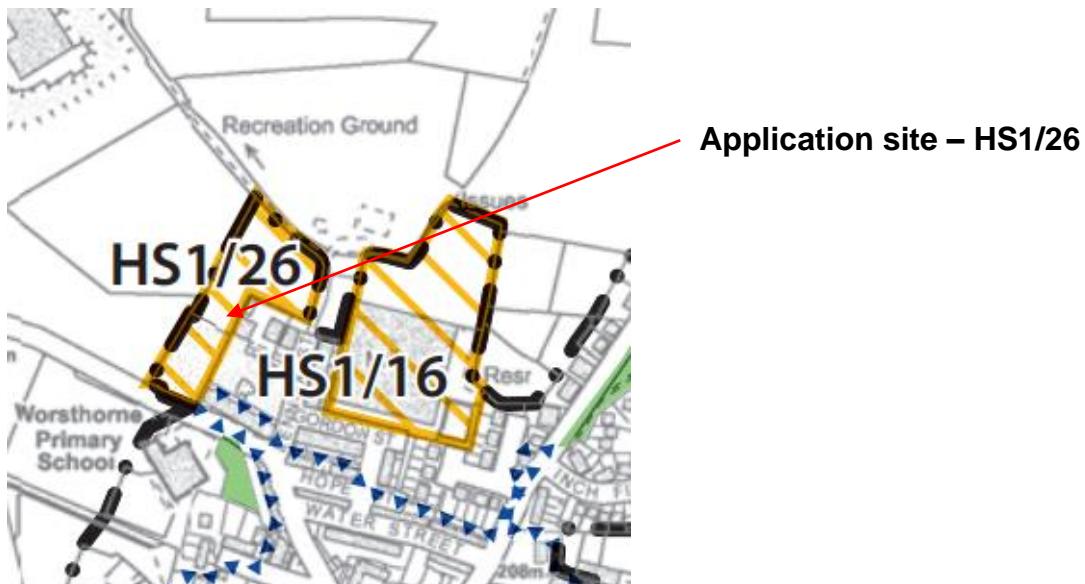
Planning and Environmental Considerations:

Principle of proposal

Policy SP1 of Burnley's Local Plan, adopted in July 2018, states that the Council will take a positive approach that reflects the presumption in favour of sustainable development set out in the National Planning Policy Framework (NPPF). It will work proactively with applicants and to find solutions which mean that proposals can be approved wherever possible to secure development that improves the economic, social and environmental conditions of the Borough. It also echoes the guidance in the NPPF by stating that "Planning applications that accord with the policies in this Local Plan... will be approved without delay, unless material considerations indicate otherwise".

Policy SP2 sets out the Housing Requirement for the borough between 2012 and 2032, identifying a net additional requirement of 3,880 dwellings, of which there is a residual requirement of 1,798 dwellings to be met by site allocations. Policy HS1 identifies those sites that have been chosen through the local plan process to meet this requirement. Of the 32 sites listed under Policy HS1, the site allocation at land adjacent 250 Brownside Road (HS1/26) with an area of 0.73ha is a mixed greenfield and brownfield site.

Extract from Policies Map of Burnley's Local Plan



Policy HS1/26 states that the above site is acceptable for around 18 dwellings. The current proposal is therefore in accordance.

Policy HS1 states that development on the allocated site will be acceptable in principle for housing development and will be required to be delivered in accordance with the site specific requirements [listed in HS1/26] together with the requirements of other relevant policies elsewhere in the Plan. The principle of developing the site for residential purposes has already therefore been established through the local plan process, taking into account the economic, social and environmental objectives of sustainable development.

Policy HS1/26 states that the site is acceptable for around 18 dwellings; this figure is also consistent with the extant outline planning permission (APP/2017/0397). The proposal is acceptable in principle subject to the remaining site specific requirements and consideration of other plan policies. The Site Specific requirements in this case relate to a requirement for a mix of dwelling types; an Ecological Survey for Protected Species and breeding birds; appropriate landscaping and boundary treatment to reduce the impact on the wider landscape; vehicular access from a single point on Brownside Road; and possible contributions towards off-site highway contributions.

The above requirements and other material considerations relating to plan policy requirements, including the effect of the proposal on the setting of Worsthorne Conservation Area, are considered below.

Design and Layout of the development

Policy SP5 states, amongst other things, that the Council will seek high standards of design, construction and sustainability in all types of development. The NPPF also states that good design is a key element of sustainable development.

The proposal for 18 dwellings provides a density of approximately 24 dwellings per hectare which is close to the minimum density requirement of 25 dwellings per hectare that is set out in Policy HS3. A low density development in this case allows for a higher level of landscaping to mitigate the visual impacts of developing on the edge of the village. The proposed house types provide a good mix of 11 detached houses and 7 semi-detached/terraced houses with a slightly higher proportion of three bedroom houses (56%) than four bedroom houses (44%). The two storey scale of the

development is appropriate, reflecting the general scale of local housing and has been designed to provide a landscaped entrance with the first plot angled towards Brownside Road and house plots that front an informal loosely linear pattern that allows the majority of houses to have fronts facing westerly towards the open fields. The form and design of the proposed house types respect local vernacular features with well balanced frontages, stone window and door surrounds and stone corbels. Natural coursed stone would be used to most elevations (with render to some rear and side elevations) and natural slate to the roofs. A coherent design of landscaping along the route of the proposed road and private access roads with cedar coloured block paving on the latter to distinguish it from the main black top access road and charcoal coloured block paving to individual drives and parking spaces. This would produce a high quality appearance that is appropriate for the site.

An Energy Statement has been submitted to address the sustainability requirements of Policy SP5. This reviews the suitability of the use of renewable technology such as wind turbines, ground and air source heat pumps, biomass, micro combined heat and power, photovoltaic panels and solar water heating. The scale of the development and site conditions (including the orientation of dwellings) reduce the benefits from these technologies. The Energy Statement demonstrates that a fabric first approach could achieve a saving in CO₂ emissions through the take up of energy efficient measures. The Statement demonstrates that this would achieve a 10.49% reduction in CO₂ emissions over and above the building regulation requirements. It is accepted that this would bring tangible energy saving benefits that would comply with the objectives of this policy.

The Planning Statement affirms that the proposed development will comply with that part of Policy HS4 that requires 20% of dwellings to be designed to adaptable to support the changing needs of occupiers over their lifetime, including people with disabilities by designing four of the plots (numbers 2, 3, 4 and 5) to comply with the optional technical standards of Part M4(2) of the Building Regulations 2010.

Policy HS4 requires housing developments of between 10 and 49 dwellings to provide public open space at a rate of a minimum of 0.3ha per 50 dwellings. This would be provided at the entrance into the development on the western side of the estate road. It would be informal open space and planted with trees and bulb planting within a grass mix and would be managed by a private management company. Policy HS4 also requires housing developments to contribute to equipped play space. The Head of Greenspaces and Amenities has requested a contribution from the development to be used for improvements at the adjacent recreation ground. A figure of £21,700 has been calculated based upon a multiplier of £350 per bedroom which is consistent with draft Supplementary Planning Document (SPD) on Developer Contributions. The developer has agreed to make this contribution. The open space requirements of Policy HS4 would therefore be met.

The proposed scheme would therefore create a high quality residential scheme that would comply with the objectives of Policies SP5 and HS4.

Impact on setting of Worsthorne Conservation Area

Policy HE2 states that proposals affecting designated heritage assets will be assessed having regard to the desirability of sustaining and enhancing the significance of the asset. In this case the proposal potentially affects the setting of the Worsthorne Conservation Area as it forms a new built-up edge on the north westerly edge of the

Conservation Area. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 confers upon local planning authorities a duty to have special attention to the desirability of preserving or enhancing the character or appearance of that area. The NPPF requires the level of harm to an historic asset to be identified and considering any harm against any public benefits arising from the development.

The attractive stone terrace to the east side of the proposed site entrance currently provides the entry into the Worsthorne Conservation Area. The proposed modern residential scheme would sit outside of that and provide a new gateway into the village from Burnley through Brownside. Whilst some of the openness that currently surrounds this edge to the Conservation Area would be diminished , the scale and character of the new development would not be dominating and given the use of natural stone and slate and the retention of the Common Lime and Black Poplar on the frontage, it would create a sensitive development on the edge of the Conservation Area. The distinctive identity of the character of the Conservation Area as seen from within and the approach to the Conservation Area would be retained. The special character of the Worsthorne Conservation Area would not therefore be harmed by the proposal. The proposal would not therefore conflict with Policies HE2 or the NPPF.

Trees and landscaping

Policy NE4 states, amongst other things, that development proposals that lead to a loss of protected trees will not normally be permitted and that proposals should provide for the protection and integration of other trees and hedgerows for their wildlife, landscape and/or amenity value. The Burnley (Brownside Road/Lennox Street) Tree Preservation Order (TPO) 2017 currently protects two individual trees (Black Poplar to frontage and ash tree on boundary with Lennox Street) and six small groups of trees which ae mainly found on or close to site boundaries.

An Arboricultural Impact Assessment has been submitted with the application that identifies some trees along the site frontage would need to be removed to construct the improved site access and footway improvements. The common lime and downy birch (within G2 of the TPO) at the west side of the site access would be retained and the prominent Black Poplar (T2 of the TPO) at the south east corner of the site close to 250 Brownside Road would also be retained.

Proposed Landscaping Scheme



A protected ash tree (T1 of the TPO) and ash trees within groups, some of which are protected (such as G3 and G4) would need to be removed due to colonisation by Ash Dieback Disease. Replacement trees are proposed for all trees that would be removed, consisting of downy/white birch, chanticleer pear and sessile oak (22 trees in total). The proposed planting scheme shown above also indicates native hedges along a part of all the site boundaries. The new and compensatory tree planting would assist in providing future tree cover along site boundaries and at the site entrance. This would particularly help to compensate for the total loss of ash trees which are affected by the Ash Dieback Disease and help to restore a suitable green edge and filtered views of the development from the approach into the village. The landscaping scheme also provides extensive planting of native shrubs on site boundaries and planting within the site which would enhance the setting of the site and help to encourage biodiversity.

Impact on residential amenities

Policy SP5 requires development to safeguard the residential amenities of existing development as well as provide satisfactory amenity for new occupiers. Policy HS4 requires a minimum of 20m between facing windows of habitable rooms and 15m between a blank gable and an elevation with a habitable room window which are necessary to provide appropriate levels of privacy and outlook for new occupants and existing residents.

The layout and spacing of the proposed development has taken into account these minimum separation distances. Plot 1 would be at an oblique angle to 250 Brownsde Road and would not lead to any significant loss of privacy. The development would wrap around the cul-de-sac development of new houses off Lennox Street which will

alter the outlook from these properties but would avoid direct overlooking and maintain adequate living conditions in respect of daylight, sunlight and privacy.

Concerns have been raised by residents that the location of a new pedestrian path and cycle link at the rear of numbers 10-14 Lennox Street would lead to overlooking, loss of privacy and noise. The developer had included a footway and cycle link between the site and Lennox Street in order to address a condition of the outline planning permission. Alternative locations at the north end of the site were impractical because it would need to link to the adopted highway. Its location to the rear of existing houses would be unlikely to adversely affect the overlooking or amenities of neighbouring properties with planting and boundary treatment, particularly having regard to the relative light use that would be expected. However, the applicant has reported that it would connect to a private part of Lennox Street and they have been unable to gain permission to do this. As such, the proposed pedestrian path and cycle link form the site onto Lennox Street has been removed from the proposals.

A neighbour has complained about the protected Black Poplar tree in the south east corner of the site. Given the protection that the tree is afforded, there is a procedure for seeking consent for pruning works and this does not affect the consideration of the current application.

The proposed development would safeguard the residential amenities of neighbouring properties and comply with Policy SP5.

Impact on traffic and highway safety

Paragraph 109 of the NPPF states that development should only be prevented or refused on transport grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. The NPPF also requires proposals to provide safe and suitable access for all users and to create opportunities for walking, cycling and public transport.

Policy IC1 seeks to promote sustainable travel and safe pedestrian, cycle and vehicular access, including adequate visibility splays.

Policy IC3 requires two off-street parking spaces for three bedroom dwellings and three off-street parking spaces for four bedroom dwellings.

A Transport Statement has been submitted with the application. This indicates that the trips derived from the site would generate low traffic flows and have no discernible impact on the network. LCC Highways do not disagree with these findings. The improved access and sight lines would provide adequate visibility for drivers. Off-site improvement are sought in respect of a footway link on both east and west sides of the improved junction and the re-location of one bus stop (from outside 258/260 Brownside Road to near to Plot 1 and improvements to the bus stop on the school side of Brownside Road) as well as a Traffic Regulation Order to impose 'No waiting' restrictions to deal with short term school related parking. Conditions are necessary to secure the off-street highway improvements and to require a Construction Method Statement.

Parking within the scheme provides the required level of parking provision for three and four bedroom dwellings. A condition is necessary to ensure the retention of the spaces, including garage spaces.

Policy IC3 also requires charging points for ultra-low emission vehicles to be provided where practical in accordance with the standards set out at Appendix 9 which requires (for schemes over 10 dwellings) one charging point per detached dwelling. The proposed scheme complies with this requirement.

A pedestrian and cycle link is not provided to connect the development with Lennox Street for reasons stated earlier (relating to land ownership and permissions). Whilst a link had been encouraged, it is not vital to a development of this scale.

The proposed scheme and the traffic that will arise from it can therefore be adequately accommodated within the highway network and would provide a safe means of access subject to the provisions and conditions recommended by LCC Highways. The proposal therefore complies with Policies IC1 and IC3.

Impact on ecology

Policy NE1 states that all development proposals should, as appropriate to their nature and scale, seek opportunities to maintain and actively enhance biodiversity in order to provide net gains where possible. Policy HS1/26 refers to the possibility of Protected Species and breeding birds being found to use the site. The applicant has submitted an updated survey that has found no bat roosting activity or usage of a badger sett on the site. GMEU assert that the proposed native species planting which is part of the landscaping scheme will enhance biodiversity and recommends further native shrubs to the north boundary which have been added to the scheme. GMEU recommend similar conditions to those imposed on the earlier outline planning permission (APP/2017/0397) together with further conditions to improve biodiversity connectivity by adding two integral bat boxes or two bird boxes and requiring a further survey for the presence of badgers prior to any site clearance. These conditions are necessary to ensure adequate protection to Protected Species and to maintain and enhance biodiversity. With these provisions, the proposed development would comply with Policy NE1.

Impact on education provision

The education authority has an adopted policy and methodology for assessing the impact of new housing development on education provision. It has calculated a need for an additional 2 secondary school places school places, totalling £50,161.80. The need for the school places arises directly from the number of new houses and bedroom numbers that would be built on the site. The applicant has been asked for their agreement to make the contribution and has considered this alongside requests for other contributions which is discussed under the heading 'Planning Contributions' below.

Affordable Housing

Policy HS2 requires affordable housing on sites of over 10 dwellings. This will normally be an on-site requirement but Policy HS2 permits an off-site contribution where it is satisfactorily demonstrated to be justified. The extant outline planning permission (APP/2017/0397) provides for an off-site contribution towards affordable housing. This was previously justified in respect of the type and size of houses that would be suitable for this site as well as the availability of alternative sites closer to the

main urban area which offer more choice of transport modes. It is similarly accepted in this case that an off-site contribution would be an appropriate means of supporting affordable housing and ensuring compliance with Policy HS2.

The applicant has been requested to make a contribution to affordable housing and this is discussed below together with other contribution requests.

Health provision

Policy IC4 of Burnley's Local Plan states that development will be required to provide or contribute towards the provision of the infrastructure needed to support it. The policy provides a list of appropriate matters that may be funded by planning contributions and this includes Health Infrastructure. Impact on health is therefore a material planning consideration.

A request has been received by the East Lancashire NHS Trust (The Trust) for a contribution of £24,913.00 towards health care provision. The contribution would be used for revenue funding within the Trust area. The Trust provides services from the following hospitals:-

- Royal Blackburn Teaching Hospital
- Burnley General Teaching Hospital
- Clitheroe Community Hospital
- Accrington Victoria Hospital
- Pendle Community Hospital

The Trust is a public sector NHS body and funded from the social security contributions and other State funding. The Trust is commissioned to provide planned and emergency acute healthcare to the population of East Lancashire and Blackburn with Darwen. Acute healthcare services incorporate activities delivered in a hospital setting. The request is made on the basis that a direct impact of the development would be an increase in demand for its services within the Trust area which is not accounted for in the first year of occupation. The reason for a shortfall in the first year of occupation is due to the method of calculating funding which is based on the previous year's activity volumes within the Trust area. The Trust state that if there is a shortfall in funding that this will impact on service delivery.

The request has been fully considered against the requirements for obtaining contributions. Counsel opinion was obtained on a similar matter (for a larger and more significant development) and the advice remains relevant in these circumstances. A contribution must assist in mitigating the impact of the development in order to make the development acceptable. It can only be sought where it meets all of the three tests in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 which are also repeated in the National Planning Policy Framework. An obligation 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.

The Trust has explained in its methodology that the need for the health care contribution for revenue funding is due to the impact from an increase in population in the Trust area due to the development on the site. The Trust seeks funding for the first year of occupancy of all the proposed dwellings based on an average household occupancy that it has calculated (43 occupants). Whilst, in principle, the provision of

healthcare is a material planning consideration, it can only be material to an individual case where the impact has been clearly assessed. This request for revenue funding is based on there being an increase in population from the whole of the development. Given, however, the breadth of the geographical area that the Trust covers which goes far beyond the Burnley area, it is unrealistic to assume that all new occupants of the proposed 18 dwellings will be new to the Trust area. The Trust also do not consider how new occupancies may result from changes in households or whether it would receive the same share of patients from the new development as it receives from the existing population. The Trust provide no reasoning or evidence to support their assumptions on these matters and in, effect, this could lead to double counting. Without any evidence to support the assumption that the proposed development would lead to an increase in population (amounting to 43 people) in the Trust area from all the proposed dwellings on this site, there is no reliable reasoning or evidence to conclude that the development will have an impact on the health care services provided by the Trust.

In these circumstances, a contribution is not necessary to make the development acceptable. It would therefore fail the three tests listed above as it would not be necessary to make the development acceptable in planning terms; it would not be directly related to the development; and it would not be fairly and reasonably related in scale and kind to the development. As such, as a matter of law and policy, the Council cannot either request or accept a contribution as sought by the Trust. Given that the requested contribution is not necessary to make the development acceptable, the concerns raised by the Trust are not reasons to object to the application.

Planning Obligations

Policy IC4 states that development will be required to provide or contribute towards the provision of the infrastructure needed to support it. The policy states that contributions will be negotiated on a site-by-site basis and will only be sought where they are:

- 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.

A Supplementary Planning Document, headed 'Developer Contributions' is a consultation draft document in which case only limited weight can be afforded it but it provides relevant guidance on matters of viability. The SPD utilises the Local Plan Viability Assessment to assess the likely ceiling limits for developer contributions for development types at different site typologies. It is accepted in each circumstance there will be a ceiling for developer contributions at which point a site is unlikely to be unviable and unable to progress towards development. This means that it won't always be possible for a developer to agree to every request. The SPD provides an evidence based assessment of what that limit would be and provide a guide to prioritising requests. Policy IC4 provides a list of the most likely appropriate matters to be funded by planning contributions. These include Affordable Housing, Transport improvements, Open space and Education provision. The following contributions have been sought (excluding the contribution request for health care which is reported above):-

Off-site Highway works (s278 works) - £28,035

Open Space improvements (Worsthorne Recreation Ground) - £21,700

Off-site affordable housing contribution - £19,500

Education contribution - £50,161.80

These total £119,396.80 which is above the level at which the developer asserts is viable for the development of the site. A Viability Assessment has been submitted to demonstrate that a contribution at this level would not enable the site to come forward for development. This has been checked against the evidence within the Local Plan Viability Assessment. This is the correct approach; the National Planning Practice Guidance (Paragraph 11) states that where a viability assessment is submitted to accompany a planning application this should be based upon and refer back to the viability assessment that informed the plan.

Taking the Local Plan Viability Assessment, it is calculated that the part greenfield/part brownfield site at this edge of village location would have a ceiling contribution of up to £152,910. Any abnormal costs should however be deducted from this ceiling amount. The developer has provided a list of abnormal costs which total £389,558 (which include a new foul pumping station and associated off-site foul drainage works, works to the site entrance, removal of Japanese Knotweed and off-site surface water drainage works). Whilst some of these are taken into account in the land use typology (in this case a 30% allowance for brownfield land), it is accepted that the off-site surface water drainage costs represent abnormal costs and should therefore be deducted from the overall ceiling for contributions. This would provide an overall available ceiling contribution of £83,136.

The requests for contributions amount to £119,396.80 is higher than the ceiling level of £83,136 which is the figure calculated from the Local Plan Viability Assessment to be appropriate for the site. From this it is concluded that it will not be possible to achieve all the requested contributions. The Developer Contributions SPD seeks to prioritise requests, putting the highest priority on those that are necessary and critical and then those that are necessary and important. Firstly, the off-site highway works are necessary and critical and should therefore be the highest priority. Secondly, the open space contribution is necessary to comply with Policy HS4 to provide recreational improvements close to the site for the new occupiers of the development. Thirdly, an off-site contribution to Affordable Housing is necessary to comply with Policy HS2 and is important to provide for the affordable housing needs of the borough. These contributions would amount to £69,235, against a ceiling of £83,136. An education contribution of £50,161.80 would therefore go far beyond the ceiling figure. Whilst it is recognised that a contribution to two secondary school places are justified requests and considered to be necessary and important, the National Planning Practice Guidance is clear that viability is also an important consideration and refers to the Department of Education publication 'Securing developer contributions for education (November 2019)' where it states at Paragraph 6 that 'While basic need funding can be used for new school places that are required due to housing development, we would expect this to be the minimum amount necessary to maintain development viability, having taken into account all infrastructure requirements' and also at Paragraph 2 where it states that 'a nil rate can be applied if the viability evidence indicates this is appropriate'. In these circumstances, it would be inappropriate to refuse a development on the grounds of not making a contribution to education as it has been clearly demonstrated through viability assessment that a contribution would not be viable.

The applicant has been requested to make contributions to Open Space (£21,700) and Affordable Housing (£19,500) which together with the off-site highway works amounts to £69,235. Whilst the applicant maintains that the contributions would still adversely affect the developer viability of the scheme, they have agreed to make this contribution. Notwithstanding that this would not provide the request from Lancashire County Council for two secondary school places, it would contribute effectively to the infrastructure costs of the development and comply with the requirements of Policy IC4.

Other issues

Policy NE5 requires appropriate assessment to deal with potential contamination. A Site Investigation and Ground Assessment has been submitted with the application. This recommends a remediation strategy is required to ensure the safety of the site for residential occupants and to ensure there is no pollution of groundwaters.

Policy CC4 seeks to manage flood risk. The site is within a low flood risk area. A Drainage Strategy has been submitted. This provides for surface water to discharge into the adjacent watercourse to the north via oversized, underground pipes with a vortex flow control to limit the flows to a maximum of 5.9 litres per second. United Utilities request that the development be carried out in accordance with this strategy and the Lead Local Flood Authority recommend conditions to require final details of the scheme and for a management and maintenance plan. In respect of foul drainage, a new on-site pumping station is required due to the slope of the land and the need to take foul water to the public sewer on Brownfield Road. Subject to the recommended conditions, the site can be satisfactorily drained and would not significantly affect the risk of flooding.

Conclusions

The proposal seeks to develop a site that is allocated for housing purposes. A suitable scheme has come forward that complies with the site specific requirements of the local plan and wider plan policies. The scheme has been sensitively designed with good attention to quality materials, design and landscaping in order to create an appropriate new edge to the village and to respect the setting of Worsthorne Conservation Area. Impacts from the development in respect of traffic, drainage and ecology can be satisfactorily addressed by conditions. Improvements to recreational open space and provision for off-site affordable housing are necessary to cater for the needs of the development and plan policy objectives to support the provision of affordable housing. These can be satisfactorily dealt with through a section 106 Agreement. Viability evidence has been taken into account in determining planning contributions for the site. A request for a contribution to two secondary school places has been considered but should be waived in this case due to compelling viability evidence that has been explained in the report. In these circumstances, the objection from Lancashire County Council to non-payment of the contribution would not amount to grounds for refusing the application. The NPPF states that decisions should apply a presumption in favour of sustainable development which for decision-taking means approving development proposals that accord with an up-to-date development plan without delay. Clear benefits would arise from the delivery of new housing at an allocated site. The proposal complies with the development plan and there are no material reasons to outweigh this finding in which case the application should be approved without further delay.

Recommendation: Delegate to the Head of Housing and Development Control to approve subject to a section 106 Contribution relating to Open Space improvements and Off-site affordable housing and the following conditions:

Conditions

1. The development must be begun within three years of the date of this decision.

Reason: 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. The development hereby permitted shall be carried out in accordance with the following approved plans listed on this notice below.

Reason: To ensure the development is implemented in accordance with the approved plans and to avoid ambiguity.

3. Prior to the commencement of built development, representative samples and details of the external materials of construction to be used on the walls and roofs of the development shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter only be carried out in accordance with the approved materials.

Reason: 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. All planting, seeding or turfing comprised in the approved details of landscaping in the Landscape Layout (drawing number 446/01RevC) 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.

Reason: In order that the landscaping works contribute to a satisfactory standard of completed development and its long term appearance harmonises with its village and countryside surroundings and also provides for biodiversity gains, in accordance with Policies SP5 and NE1 of Burnley's Local Plan (July 2018).

5. Prior to the commencement of built development, details of the management company, its responsibilities and its funding mechanisms for the management and maintenance of all areas of open space within the site excluding private gardens, to cover the lifetime of the development, shall be submitted to and approved in writing by the Local Planning Authority. Any subsequent changes to the management details shall be submitted to the Local Planning Authority prior to the change taking place.

Reason: 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).

6. No development shall be commenced until a scheme for the means of protecting the trees and hedges to be retained on or adjacent to the site, in accordance with BS 5837 (2012), including the protection of root structures from injury or damage prior to and during the development works, has been submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall also provide for no excavation, site works, trenches or channels to be cut or laid or soil waste or other materials deposited so as to cause damage or injury to the root structure of the retained trees or hedges. The approved scheme of protection measures shall be implemented in its entirety before any works are carried out, including any site clearance work, and thereafter retained during building operations until the completion of the development.

Reason: To ensure adequate protection for the long term health of trees/hedges which should be retained in the interests of the visual amenities and biodiversity of the site and its surroundings, in accordance with Policy NE4 of Burnley's Local Plan (July 2018). The details are required prior to the commencement of development to ensure that provision can be made for their implementation at the appropriate stage of the development process.

7. No removal of or works to any trees, shrubs or grassland shall take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check of vegetation for active birds' nests immediately before the vegetation is cleared and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation shall be submitted to the Local Planning Authority prior to any works taking place.

Reason: 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).

8. Prior to the commencement of development (including groundworks, vegetation clearance), an invasive non-native species protocol shall be submitted to and approved by the Local Planning Authority, detailing the containment, control and removal of Japanese knotweed present on site. The measures shall be carried out strictly in accordance with the approved scheme and shall be completed prior to any dwelling on the site being first occupied.

Reason: The spread of Japanese knotweed in the wild is prohibited under the terms of the Wildlife and Countryside Act 1981 (as amended). The protocol is required prior to the commencement of development to avoid the spread of an invasive species which may otherwise occur.

9. Prior to the commencement of development including any vegetation clearance, earth moving or site enabling works, the whole site and 30m boundary should be resurveyed for the presence of badgers including the disused hole on the eastern boundary. A report shall be submitted to the Local Planning Authority detailing any new evidence and any changes to usage from that submitted in the Ecological Appraisal (Simply Ecology Limited, May 2020). Any changes should

be accompanied by details of the need to modify the measures identified in the Ecological Appraisal. If no changes have occurred then the hole shall be closed using appropriate on-site ecological supervision as recommended at Annex D para 4.3.3 of the submitted Report.

Reason: To ensure that adequate measures are taken to avoid any potential to affect badgers which are a protected species, in accordance with Policy NE1 of Burnley's Local Plan (July 2018). The measures are required prior to the commencement of development in order to satisfactorily protect badgers.

10. No development shall be commenced or any removal of bat boxes installed on the site take place until the boxes have been inspected by a suitably qualified person for the possible presence of bats. If bats are found to be present a method statement giving details of measures to be taken to avoid any possible harm to bats shall be prepared, submitted to and approved in writing by the Local Planning Authority prior to any development being commenced. Once approved this method statement shall be implemented in full. Whether any bats are present or not, a minimum of two bat boxes and two bird boxes shall be installed on the site post-construction prior to any dwelling being first occupied, in accordance with details to be previously submitted.

Reason: To ensure adequate precautionary measures to avoid harm to bats and to provide compensation for possible lost bat roosting potential and to encourage breeding birds to the site to enhance biodiversity on the site, in accordance with Policy NE1 of the Burnley's Local Plan(July 2018). The details are required prior to the commencement of development to ensure that provision can be made for the implementation of measures at the appropriate stage of the development process.

11. 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.

Reason: 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.

12. The applicant or developer shall not permit any delivery vehicles to either arrive at or enter and shall not permit delivery vehicles to exit the site between 08:30

and 09:30 hours and between 15:00 and 16:00 hours on Mondays to Fridays inclusive.

Reason: To ensure safety for school children and those dropping off and collecting children at the start and end of the school day, due to the close proximity of the site to a local primary school, in the interests of highway safety, in accordance with Policy IC1 of Burnley's Local Plan (July 2018).

13. 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.

Reason: 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).

14. 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.

Reason: To safeguard the residential amenities of the local area, in accordance with Policy NE5 of Burnley's Local Plan (July 2018).

15. Prior to the commencement of development, a scheme for the construction of the site access and associated off-site works of highway improvement to include new footways either side of an improved junction, the re-location of a bus stop outside 258/260 Brownside Road and improvements to the bust stop opposite the site, facilitating a Traffic Regulation Order to impose no waiting restrictions, shall be submitted to and approved in writing by the Local Planning Authority.

Reason: 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.

16. No dwelling shall be first occupied until the approved scheme referred to in condition 16 above has been constructed and completed in accordance with the scheme details.

Reason: 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).

17. 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.

Reason: 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).

18. 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.

Reason: 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).

19. None of the approved detached dwellings shall be first occupied until it has been provided with an external electric car charging point in a suitable position to enable the recharging of an electric vehicle using a 3m length cable.

Reason: 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).

20. The development shall be constructed in accordance with the surfacing materials to be used on the estate roads, driveways and parking spaces as indicated on the approved plans.

Reason: 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).

21. The approved access junction and estate 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 takes place.

Reason: To ensure that satisfactory access is provided to the site before the development hereby permitted becomes operative, in the interests of highway safety, in accordance with Policy IC1 of Burnley's Local Plan (July 2018).

22. 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.

Reason: To ensure these details are adequate to provide satisfactory access and amenity for the occupiers of the development, in accordance with Policy IC1 of Burnley's Local Plan (July 2018).

23. No development shall be commenced until details of a surface water sustainable drainage scheme, based on sustainable drainage principles, and including details of water quality controls and a timetable for implementation, has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented and completed prior to the first occupation of any dwelling, and the approved drainage scheme shall thereafter be retained at all times.

Reason: 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.

24. No dwelling hereby approved shall be occupied until details of a management and maintenance plan for the sustainable drainage system required by condition 24 which shall cover the lifetime of the development, has been submitted to and approved in writing by the Local Planning Authority. The sustainable drainage system shall thereafter be managed and maintained at all times in accordance with the approved details.

Reason: To ensure that 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).

25. No development shall be commenced until a scheme for the disposal of foul water has been submitted to and agreed in writing by the Local Planning Authority. The approved scheme shall be implemented in full and completed prior to any dwelling being first occupied. The foul water drainage scheme shall thereafter be retained at all times in the future.

Reason: To ensure the site can be adequately drained and to prevent pollution of groundwaters, in accordance with Policy NE5 of the Burnley's Local Plan (July 2018). The scheme is required prior to the commencement of development to ensure that the measures identified in the scheme can be carried out at the appropriate stage of construction.

26. Details of boundary treatment to be used on the application site boundaries and within the development site shall be submitted to and approved in writing prior to the commencement of built development. The development shall thereafter be carried out and completed in accordance with the approved details prior to the completion of the development.

Reason: To ensure the details are appropriate and complement the approved landscaping scheme for the site, in accordance with Policy SP5 of Burnley's Local Plan (July 2018).

27. Prior to the commencement of development, a Remediation Strategy shall be submitted to and first approved in writing by the Local Planning Authority in accordance with the recommendations of the Site Investigation and Ground

Assessment (Report reference BEK-19642-1, dated January 2020) submitted with this application. The approved Remediation Strategy shall thereafter be implemented in full during the course of the development and shall be completed prior to the first occupation of any dwelling. In addition, a Validation and Verification report shall be submitted and accepted in writing by the Local Planning Authority prior to any dwelling being first occupied. In the event that the approved report makes recommendations for future monitoring then this should also be adhered to in accordance with the details of the recommendations and any results of such monitoring shall be submitted to the Local Planning Authority.

Reason: 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). The scheme is required prior to the commencement of development in order to ensure that any remediation measures that may be necessary can be carried out at the appropriate stage in the development process.