

15 May 2023

Burnley Council
Town Hall
Burnley
BB11 9SA

Dear Party Leaders,

Planning Application FUL/2022/0149 - Hollins Cross Farm, Coal Clough with Deerplay

I write to you in respect of our current Planning Application for 200 homes on land south of Glen View Road, at Hollins Cross Farm. Whilst some of you sit on the Development Control Committee and are therefore well informed in the context of this application, in light of its referral to Full Council for consideration, I wanted to ensure that you are familiar with the detailed background which may assist you. In summary, I set out below the merits of the scheme; its recommendation for approval at 3 planning committees; address members remaining drainage and flood risk concerns; and finally, propose an option that would provide members further comfort on the suitability of the proposed drainage designs whilst avoiding undue delay to the development.

Prospect Homes is part of the of The Riverside Group Limited, a non-profit registered charity. We operate across the Northwest of England and all profits go back to the Group to fund a wide range of social purposes, including affordable homes and care and community support services. The site at Hollins Cross Farm represents a critical element of Prospect's business being one third of its secured pipeline. The 6-month delay through planning has put significant pressure on the business as an SME and the scheme is of huge significance. To date we have invested over £0.5m in the scheme, which is now at risk. Refusal or further delays represents a material risk to the business with wider impacts for the Riverside Group.

Prospect Homes is proud to have brought this scheme before the Council. We understand that this is a prominent, allocated housing site of significant importance for the area. For this reason, we have been pleased to work collaboratively with planning officers over the last 2 years to design the proposals.

The Site is allocated for housing development within the adopted Local Plan under reference HS1/2. Ahead of preparing proposals for the site, formal pre-application discussions were held with the Planning Policy and Development Management departments in March 2020 to understand the Council's aspirations for the site. In October 2021 a comprehensive public consultation exercise was undertaken with almost 1,000 letters sent to local residents, key local groups, and ward Councillors. 140 responses were received, and a thorough Statement of Community Involvement prepared.

The initial layout was updated prior to submission in May 2022 to reflect the pre-submission public consultation, and also post-submission in discussion with Planning officers to address additional comments received during the statutory consultation process. As a direct result of this, changes were made to minimise impacts on adjacent homes and further enhancements made to the building materials, planting, highway layouts, and open space provision. Planning officers, having objectively reviewed the submission, have consistently supported the application and recommended it for approval, subject to usual planning conditions for a scheme of this nature and on agreement of a number of Planning Contributions, which Prospect have not sought to reduce at any stage. Planning Conditions include the requirement for final approval by the Planning Authority on the detailed drainage strategy prior to the start of the development.

The scheme will deliver:

- Over-provision of Affordable Homes with 20 new homes, which is double the 5% provision required by Policy;
- A high proportion of semi-detached and four-bedroom detached homes in line with the Council's intentions to re-balance the housing market which is currently dominated by smaller terraced properties;
- Provision of adaptable homes over and above policy requirements;
- Enhancement to building efficiencies that will deliver up to a 70% reduction in carbon emissions;
- House type designs that have been adapted to be in-keeping with the traditional Burnley style;
- Sustainable methods of on-site surface water management to improve drainage and reduce flood risk;

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- Provision of over two hectares of open space and contribution of £75,000 to improving existing provision;
- A further £1.1m s.106 contributions for local school places, highway improvements and ecological enhancements;
- A significant number of new local jobs during construction and apprenticeships in coordination with local colleges.

The Application was first reported to Development Control Committee in December 2022, with no objections from statutory consultees and with a supportive recommendation for approval from planning officers. Notwithstanding this, it was deferred at the meeting, on grounds of: Biodiversity Net Gain, Flood Risk, queries over the management and operation of the attenuation basin; Adaptable Homes, location of parks to benefit from Open Space Contributions, and the conclusions of the Transport Assessment.

Following that first deferral, additional technical work was undertaken over the Christmas period and a supplementary technical report was commissioned by Prospect to provide further certainty to members. This clarified that the proposal did deliver a net gain in Biodiversity in line with policy; the basin would be managed appropriately by United Utilities and a specialist management company and would in the main only hold a small volume of water; Adaptable Homes provision was in excess of Policy requirements; Prospect were committed to the £75,000 open space contribution (alongside on-site provision) and it was at the discretion of the Council as to where this should be directed; flood risk would be mitigated by the development; and that the Transport Assessment sufficiently assessed the impacts of the development in accordance with the National Planning Policy Framework. With regards the latter points planning officers reconsulted both the Lead Local Flood Authority (LLFA) and Lancashire County Council (LCC) Highways Authority, who again reconfirmed they were satisfied and raised no objection.

At the (second) Development Control Committee in January 2023, the application was again recommended for approval by Planning officers, and whilst the committee were satisfied with most points clarified above, the application was deferred solely on the grounds of perceived flood risk. This related to groundwater concerns raised by AEGAEA in a report commissioned by local residents. As a matter of clarification we are unaware as to the number of residents who are in this group, but would draw members attention to the overall level of representation being exceptionally low for a scheme of this size (5 responses received). It should be noted that the LLFA concluded in October 2022 that they did not object to the application, subject to standard pre-commencement conditions which Prospect agreed to.

Further to the second deferral, between January and March Planning Officers and Prospect Homes progressed additional investigation into the flood risk through both on-site works and technical assessment and commissioned a second supplemental technical report to address the concerns raised in the AEGAEA report.

In addition, following discussions between the Planning Authority and Lancashire County Council acting as the LLFA, Burnley Council instructed an independent assessment of the flood risk position by SWECO, who are a leading engineering and architecture consultancy. Prospect supported the Council's decision to undertake this assessment, provided all requested information and covered all associated costs.

The Council's report produced by SWECO concluded that: *"Based on the information available, any flooding appears to be primarily associated with surface run-off due to the presence of low permeability clayey glacial till underlying most of the site. Groundwater is present within the peat, which would be naturally associated with wet ground."*

The report acknowledges that the majority of the water-holding peat is to be removed, and therefore that *"potential flood risk is not expected to be a significant constraint to the development"*. Although noting the potential benefit of further monitoring (a caveat on any technical matter), given the weight of existing evidence to there being no issue with high groundwater, the application was again recommended for approval by officers.

Ahead of the third Development Control Committee the Planning Authority reconsulted the LLFA, who again confirmed that they were satisfied with the assessments and designs and raised no objection. Officers again recommended approval to the third planning committee.

At the (third) Development Control Committee in March 2023, members resolved to refuse the application, solely on the basis of flood risk, due to the perceived non-accordance with Policies CC4 and CC5 of the Local Plan. However, the Head of Planning intervened to refer the resolution to the Head of Legal Services to consider referral of the decision to Full Council,

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in line with the Scheme of Delegation on the basis that “the committee would not have delegated authority to pass such a resolution as this would be a decision that, in his professional opinion, was substantially contrary to the Local Plan and Local Plan Policies.” The position of the Head of Planning was reinforced by the Council’s Senior Solicitor present at the meeting, and a report by the Council’s Head of Legal and Democratic Services confirmed this intervention was the correct procedure.

The Head of Planning and Head of Legal and Democratic Services have subsequently confirmed that “to refuse the application on the grounds of an increased perceived flood risk without any evidence of this being the case cannot be substantiated”.

Based on all the above, in our view Prospect have (willingly) gone far beyond standard requirements at application stage in seeking to meet the requests of the Development Control Committee. To recap:

- The site is an allocated housing site, already assessed by the LPA (and Planning Inspectorate) to be suitable for housing;
- The site is entirely in Flood Zone 1, the lowest category of flood risk determined by the Environment Agency;
- Prospect has completed all necessary and diligent investigations and assessments to design its scheme;
- All key statutory consultees continue to be satisfied with the proposals and raise no objections;
- The attenuation basin will be appropriately managed and maintained by United Utilities and a Man co.
- Prospect has commissioned three further supplemental reports to address concerns on flood risk;
- The Council’s independent consultant SWECO is satisfied that flood risk is adequately dealt with;
- To re-iterate the scheme is of huge importance to Prospect, representing 1/3rd of its future pipeline;
- Prospect continues to engage positively on the matter and has organised a local resident drop-in session on 24 May.

From the debate at Planning Committee and discussions with planning officers since, we understand that members have asked whether determination could be deferred until further groundwater monitoring is undertaken over the winter months. In our view this would cause undue delay to the determination process when matters on layout, design, and scale have been accepted, and when all technical matters raised have been addressed. This includes all technical consultees and the overall conclusion of the SWECO report. Further delays in this context would have a significant detrimental impact on Prospect and, in our view, would simply reinforce the overwhelming body of evidence and expert opinion which states that flood risk is not an issue.

Notwithstanding this, Prospect Homes continue to seek to work proactively with members and as such are willing to propose the following additional planning condition to give members further comfort that approving the development will not increase on or off-site flood risk from any water sources. The condition would permit Prospect to progress c. 1/3rd of the development thus avoiding the operational risk of further delay, whilst restricting c. 2/3rd of the development (Phase 2 shown on Appendix A) until the attenuation basin was formed and confirmed to be operating as intended, with the comfort that the restricted development areas would remain available to amend the design of the drainage design if necessary.

“The construction of any residential building within phase 2 (as shown on phasing drawing HC/B-ERC-PHPO2), other than enabling works, shall not be permitted until the attenuation basin has been formed and documented within a site specific verification report evidencing that the factors causing the standing water in this area have been removed.”

Reason: To ensure satisfactory sustainable drainage facilities are provided to serve the site in accordance with Policy CC4 of the adopted Burnley Local Plan and the provisions of the National Planning Policy Framework.

The condition is considered to be appropriate as the main concern of members/residents is that the site may be affected by high groundwater and which our proposed drainage design has not accounted for. This concern mainly stems from a small area of standing water on the site near the northern boundary.

To be clear, our position is that the site is not affected by high groundwater. We’ve measured groundwater across the site at various times of the year and, other than where the results are naturally impeded by the small area of standing water representing 1/10th of the site, high groundwater has never been recorded. The area of standing water is simply a result of this area being a low spot at the base of a slope where surface water is trapped in an area underlain with impermeable clay with no outlet. As this standing water has been present at the same time, and as our tests have shown no high

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groundwater elsewhere on the site, this area is therefore clearly fed by surface water, not groundwater. There is therefore, in our view, no high groundwater to be dealt with, and our drainage design, assessed and approved by the LLFA, meets all requirements to deal with surface water on the site including a 1 in 100-year flood event (plus climate change) i.e. volumes of surface water far in excess of the small amount of standing water in this area.

The rationale for the condition is that rather than carry out further groundwater monitoring, the accuracy of which would continue to be impeded by the small area of standing water, we propose that the proposed attenuation basin in this area should be permitted to be formed, which would conclusively test whether this area is fed by high groundwater. In forming the proposed basin, which would be completed over the wetter winter months, this would be evident if groundwater draws into the basin from the ground below. A specialist independent engineering consultant will be engaged to oversee the formation of the basin and prepare the Verification Report required by the condition, which will confirm either; the basin was formed as designed without causing any interference with groundwater; or, how the basin was altered to avoid any interference with groundwater whilst maintaining the required capacity in the basin to deal with the surface water, as approved by the LLFA under the discharge of pre-commencement condition. These scenarios are shown on the drawings at Appendix B.

Our intention here is to provide a second level of assurance for the LPA, above the standard (and already agreed) pre-commencement condition requiring LLFA approval of our detailed drainage design, by providing further Verification post-completion of the basin, to confirm that the assumptions of the first approval have been realised i.e., confirming the basin to be operating as intended without interference with a high groundwater level.

The rationale for the second element of the condition restricting development of any units in Phase 2 until the Verification Report has been discharged is on the basis that the drainage of the Phase 2 homes, which comprise 2/3rd of the homes, is dependent on the basin being formed and operating as intended; whereas the Phase 1 homes do not, being drained separately from the basin. Phase 1 is also both the intended area to transfer the material generated from forming the basin to and it also forms the schemes natural first build route from the main access road. This will therefore permit Prospect to progress build in an area of the site whilst the basin is confirmed to be operating as intended, without comprising the drainage of the Phase 1 Units or the wider site.

We consider that the approach outlined above, with the addition of a new condition, provides full comfort to the Council that the development proposal will not exacerbate any localised flood risk. The development will in fact capture and control the currently uncontrolled surface water flows and mitigate the flood risk through a tried and tested approach approved by the key statutory consultees the Environment Agency and the LLFA, which remain satisfied with our proposals in this regard.

We are firmly of the view that this is an excellent scheme which fully meets (and exceeds in many respects) policy requirements and is the very best scheme which will be proposed on the site. I trust we can move forward on the basis of the proposal above.

Yours sincerely

Nigel Yates
Managing Director of Prospect Homes

cc. Paul Gatrell – Head of Planning, Burnley Council
Laura Golledge - Planning Team Leader, Burnley Council

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