
Statement of Case

Appeal following the non-determination of application:
FUL/2022/0149

Full planning application for the erection of 200 no.
dwellings and associated works

Hollins Cross Farm, Woodplumpton Road, Burnley

Appellant: Prospect Homes

Local Planning Authority: Burnley Council

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1. Executive Summary of Case

- 1.1. This Appeal is submitted by Prospect Homes against Burnley Council's failure to determine a full planning application for the erection of 200 no. dwellings and associated works (reference FUL/2022/0149).
- 1.2. The appeal site is allocated within the adopted Local Plan under the reference HS1/2, the second largest allocation within the Borough. HS1/2 supports the principle of around 184 homes and associated works.
- 1.3. The appeal site extends to approximately 8.65ha, is roughly rectangular in shape, and is currently in use as arable and pastoral agricultural land. There is a significant gradient across the site, with the south of the site 25m higher than the northern edge.
- 1.4. The entire site falls within Flood Zone 1 and experiences surface water flows in heavy rainfall and permanent standing water at a low point at the north of the site, due to impermeable ground conditions and no control measures in place to restrict run-off rates.
- 1.5. Pre-application advice was sought in January 2020, with the application submitted in March 2022. Following discussions with officers a number of changes were made including in respect of the play space provision, building materials, roof design, additional ecology surveys, alterations to the highway layout and some changes to residential plot orientations.
- 1.6. The application was presented to Development Control Committee in December 2022 with an officer recommendation for approval and no statutory objection from the LLFA but was deferred on six grounds including Flood Risk and Drainage. Following submission of additional evidence the application was presented to the Committee in January 2023, again with a recommendation to approve and no LLFA objection, but was deferred again, solely on grounds of Flood Risk and Drainage.
- 1.7. Following the instruction of an independent assessment into Flood Risk and Drainage by the Council to assess the comments of the LLFA and all technical evidence submitted, the application was, for a third time, presented to the Committee in March 2023 with a recommendation to approve, with (again) no LLFA objection, and the independent report confirming Drainage was not considered to be a constraint on development.
- 1.8. At the Committee meeting in March 2023, members resolved to refuse the application on grounds of Flood Risk and Drainage, due to perceived non-accordance with Policies CC4 and CC5 of the Local Plan. At this point Burnley's Head of Planning intervened to refer the decision to the Full Council, as the reason for refusal would be "*substantially contrary to the Local Plan and Local Plan Policies*". On this basis, "the Committee did not have delegated powers to pass a resolution to refuse". This position was ratified by Burnley's Head of Legal and Democratic Services who 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*".

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- 1.9. The concern of the Planning Committee appeared to be that groundwater could potentially interfere with the drainage system and prevent the planned attenuation basin from functioning as intended. Significant technical information has however been submitted to confirm ground water flows do not exist. Conditions have been agreed between the Appellant and Planning Officers to enable permission to be granted, and the drainage system to be constructed and its function independently verified, in a phased manner which retains sufficient land to re-design the attenuation basin if this required.
- 1.10. At the extraordinary meeting of the Full Council in June 2023 the application determination was deferred for a fourth time, on the basis of perceived Flood Risk and Drainage, and also queries over nesting bird surveys and peat removal.
- 1.11. Information on Flood Risk and Drainage is already available to the Council with a solution proposed to address groundwater flows in the unlikely event that these are present despite intrusive investigation to date demonstrating this is not the case.
- 1.12. Further Bird Nesting Surveys are already required through the agreed conditions with appropriate triggers, and to require this assessment prior to determination is entirely unreasonable given the survey data supporting the application already available to the Council.
- 1.13. There is no Policy within the Development Plan which seeks to prevent the loss of peat on residential sites, nor is the peat removal considered sufficient to outweigh the benefits of the proposal.
- 1.14. As will be explained, it is entirely unreasonable for the Council to withhold consent on the above grounds, and the Development Control Committee and Full Council have four times voted against the recommendation of Planning Officers (informed by the relevant Statutory Consultees on technical matters).
- 1.15. It will be demonstrated that there are no significant or adverse impacts that would outweigh the benefits of granting planning permission. Equally there are no policies in the National Planning Policy Framework that indicate that development should be restricted. The Appellant considers the development to be sustainable and one that should be granted permission.
- 1.16. Accordingly, it is respectfully requested that the appeal is allowed and planning permission granted for the erection of 200 no. dwellings and associated works.

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2. Introduction

Scope and Purpose

- 2.1. This Statement of Case ('SoC') has been prepared by Savills on behalf of Prospect Homes ('the Appellant') to support an appeal against Burnley Council's ('the Council') failure to determine planning application FUL/2022/0149 ('the Application').
- 2.2. The Local Authority voted at a Full Council meeting on the 7th June 2023 to defer determination of the application effectively until post-summer 2024. It is on this basis that an appeal is made; namely against the failure to determine the application.
- 2.3. This Statement sets out the Appellant's case in response to the above and explains why the Appellant considers that the proposal accorded with the development plan, is sustainable development and why it should be granted planning permission in line with the officer recommendations to approve.
- 2.4. The Appellant will contend that there are no adverse impacts of the proposal and the appeal scheme complies fully with the Development Plan which remains up-to-date. As such, in line with paragraph 11(c) of the National Planning Policy Framework, permission should be granted without delay. As set out below the benefits outweigh any harm, if it is found that some harm is occasioned by the proposals.
- 2.5. **This Statement of Case has been drafted on the presumption that the appeal will be heard via an Inquiry procedure as requested by the applicant, and that Proof of Evidence will be provided in due course. In the event that the Planning Inspectorate consider another procedure to be more appropriate, we would request that an opportunity is provided for the submission of additional information to fully make the case for the approval of the development, given the technical matters to be assessed.**
- 2.6. The Appellant consider that an Inquiry Procedure is the most appropriate procedural approach as the Local Planning Authority has failed to determine the application. Technical matters including drainage, peat removal and nesting birds have formed the reason(s) for deferral at the various Council meetings and therefore there is a need for evidence to be tested through formal questioning by an advocate in order for the logic and rationale for the failure to determine the application. As such, the issues cannot be clearly understood from the appeal documents and a site inspection. The Council needs to explain and clarify its reasoning for their position and the appellant should be afforded the opportunity to demonstrate there are no technical matters which should prevent the grant of planning permission.
- 2.7. Whilst the principle of development has been established, the application has attracted interest and objection from local residents, including an organised group (who have employed consultants to support their objection). A similar level of interest is anticipated in the Appeal.

Statement of Common Ground

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- 2.8. A draft Statement of Common Ground has been prepared and is submitted with the appeal. The appellant will seek to agree a Statement of Common Ground with the Council and a final version should be submitted in due course.
- 2.9. The draft Statement of Common Ground includes an initial list of conditions which will be discussed and agreed with the Council and added to the finalised Statement of Common Ground.
- 2.10. Draft Heads of Terms for the S106 Obligation are also included in the Statement of Common Ground. The Appellant will work with the Council to finalise the S106 which will be submitted to the Inspector to accord with the appropriate appeal process timeframes.

Scope of Evidence

- 2.11. It is anticipated that evidence will be required in respect of the following matters:
- Planning;
 - Flood Risk and Drainage;
 - Peat removal; and,
 - Ecology.
- 2.12. It may be that the Statement of Common Ground agrees some of these matters such that evidence is not required. Other matters are not anticipated to be the focus of the appeal. The appellant reserves the right to address other matters should they be raised.

The Planning Application

- 2.13. Application FUL/2022/0149 is for "*Full planning application for the erection of 200 no dwellings and associated works*" on Hollins Cross Farm, Woodplumpton Road, Burnley. A Site Location Plan is enclosed as **Document 2.38**.
- 2.14. The application, which was submitted on 13th April 2022, was initially deferred at two meetings of the Council's Development Control Committee on the 8th December 2022 and again on the 18th January 2023.
- 2.15. The Application was presented at a subsequent meeting of the Development Control Committee on 9th March 2023 at which the Head of Planning intervened to refer the application to a meeting of Burnley's Full Council for determination (subject to the view of the Head of Legal Services, who subsequently concurred), due to the Committee's resolution to refuse the application being 'substantially contrary' to the Local Plan, and therefore beyond the delegated authority of the Committee.
- 2.16. Members determined, on the 7th June 2023 at the Full Council meeting, to defer the decision for the following reason:

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“defer the matter to the DC Committee until the full report of the over winter survey on flooding has been received and considered by the relevant experts on the flooding together with a further report on the ecological and climate change effect of the removal of peat and a further ecological survey relevant to the nesting of birds through the whole breeding season of protected species and clarification on whether ‘lowland fens’ habitat is available.”

- 2.17. At all four Council meetings, the application was presented by Officers with a recommendation to approve the development, subject to conditions and a Section 106 Agreement.

Summary

- 2.18. This Statement of Case confirms that officers were correct in their assessment of the proposals in recommending approval on each of the four occasions. The decision of the Council to defer the determination of the application, contrary the officer recommendation, was and is unreasonable and without proper justification.
- 2.19. The proposals will provide a suitable form of development for the site in a sustainable location that is allocated in the development plan for this use.

Document Library

- 2.20. **Appendix A** of this statement sets out a full schedule of documents supporting this appeal.
- 2.21. The document library is organised into chapters as follows:
- 1.0 - Pre-application
 - 2.0 - Original Submission Pack - FUL/2022/0149
 - 3.0 - Documents submitted up to Development Control Committee in December 2022
 - 4.0 - Documents submitted up to Development Control Committee in January 2023
 - 5.0 - Documents submitted up to Development Control Committee in March 2023
 - 6.0 - Documents submitted up to Full Council in June 2023
 - 7.0 – Documents Submitted after final decision to defer the application
 - 8.0 - Documents submitted in support of application FUL/2022/0522 – Temporary access Road
 - 9.0 - Committee Reports
 - 10.0 - Correspondence
 - 11.0 - Policy Documents
- 2.22. A number of additional document schedules have been supplied as part of the Appeal, with the reference number of each document submitted, for example 3.29, consistent across all tables and schedules.

3. Appeal Site and Development Proposal

The Appeal Site

- 3.1. The site as shown on the Site Location Plan enclosed as **Document 2.38** and is situated to the south of the town of Burnley and is bound by Burnley Golf Club to the west, Woodplumpton Road to the east, New Road / Glen View Road (the A646) to the north, and Hollins Cross Farm¹ to the south. The road to the north of the site whilst under a single number (A646) changes name at the mid-point of the site, titled Glen View Road to the western half, and New Road to the eastern half. At the point of the name change, Glen View Road continues as a minor road away from the site; for the avoidance of doubt we therefore refer to the road as the A646 throughout.
- 3.2. It is understood Hollins Cross Farm is no longer an operational farm.
- 3.3. The appeal site is entirely under the control of Prospect Homes, who have a contractual position with the landowner, Mr T. Shuttleworth.
- 3.4. The site extends to approximately 8.65ha, is roughly rectangular in shape, and is currently in use as arable and pastoral agricultural land. The site slopes down at a consistent gradient with a total drop of 25m between the south-western corner of the site and the north-eastern corner.
- 3.5. The site is immediately adjacent to existing dwellings which are situated south of the A646 and off Wilkie Avenue, with these houses and the wider area being characterised predominantly by two storey semi-detached residential buildings, with some detached dwellings and terraces.
- 3.6. Aside from the golf course, the closest non-residential or agricultural land uses are a convenience food store and vehicle testing centre, both approximately 120m north-west of the site off Reynolds Street.
- 3.7. The only current vehicular access routes to the site are agricultural, along a track off Wilkie Avenue to the north-west of the site, and via a field gate off Woodplumpton Road to the east. The gate off Woodplumpton Road also provides access to the only public right of way crossing the site; footpath reference '12-6-FP 13' which continues westwards, passing south of the Hollins Cross Farm buildings.
- 3.8. The site contains none of the following: Tree Preservation Orders, trees within a Conservation Area, ancient woodland, veteran trees, trees within a Community Forest, or arboreal Habitats of Principal Importance.

¹ The farm address is Hollin Cross Farm, however the Local Plan references the site as Hollins Cross Farm; we have therefore consistently referred to the site as Hollins Cross Farm.

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- 3.9. Ecology and Biodiversity surveys (**Documents 2.08, 2.18, 2.35, and 2.45**) identified no invasive species on the site; low levels of bat activity throughout; negative eDNA survey data for Great Crested Newts; 29 bird species including eight species of Principal Importance including two bird species that probably bred within the Site and, a further five Species of Principal Importance possibly bred within 100m of the Site boundary.
- 3.10. The entirety of the appeal site is located within Flood Zone 1 according to Environment Agency's 'Flood Map for Planning'. The site is identified as being predominantly at a 'very low' risk of pluvial flooding, with the northern part of the site being at a 'medium' risk.
- 3.11. The closest heritage listed buildings to the site are two Grade II structures situated 0.4km to the north-west with no intervisibility with the site.
- 3.12. The ground conditions are identified as comprising topsoil to a depth of 0.2 to 0.4m, over glacial till up to 3.7 below ground level, and bedrock of mudstone and sandstone at locations on site up to 1.9m below ground level. Intrusive investigations have confirmed an absence of shallow mine workings, and ground gas assessment has concluded that there is no need for ground gas precautions.
- 3.13. The site is well served by public transport, with two bus stops located on the A646 with services to Burnley and Accrington. The adjacent A682 Manchester Road also provides connection to Burnley Town Centre.

Development Proposal

- 3.14. The scheme for development was subject to significant pre-application consultation and discussion with the Council from January 2020. In October 2021 a comprehensive public consultation exercise was undertaken by the Appellant prior to the submission of the application, with almost 1,000 letters sent to local residents, key local groups, and Ward Councillors.
- 3.15. 140 responses were received and the outcome of this pre-application process is reported in the Planning Statement (**Document 2.34**) and Statement of Community Involvement documents (**Document 2.39**) that accompany the application submission.
- 3.16. The appeal proposes the delivery of 200 dwellings on the site. Due to the topography of the site a central landscaped bank separates the northern and southern parts of the site, with pedestrian permeability included. Formal play space is provided in two areas comprising a LAP to the east of the site, and a LEAP to the north. A large landscaped area containing a SUDs attenuation basin creates a large buffer between new homes and the existing homes on the A646. Additional planting and landscaping is provided at the entrance to the development, and at the southern boundary of the site to create a buffer between the development and the agricultural land to the south.
- 3.17. Estate roads are accessed from a single entry point to the north on the A646, with the primary route running down the eastern side of the site, due to the gradient at the western side of the site.
- 3.18. The following mix of homes is proposed:

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House Type	Beds	Number of Homes	Percentage, All Homes	Percentage by House type*	Delivered as Affordable	Percentage, of Affordable Homes
Detached	4	99	50%	72%	-	-
Detached	3	45	22%		-	-
Semi-detached / Mews	3	36	18%	28%	11	5.5%
Semi-detached / Mews	2	20	10%		9	4.5%
Totals	-	200	-	-	20	-

- 3.19. The mix provides a large proportion of larger detached homes, as required by policy, to address the Council's stated over-supply of smaller terraced properties.
- 3.20. The proposal includes for 20 dwellings (10%) as affordable homes that are delivered across the site. The proportion of affordable housing is double the quantum required by the Local Plan policy in the view of the Council.
- 3.21. Vehicle parking is provided on private drives and within garages (both integral and some detached).
- 3.22. The layout has been amended over the course of the determination, to address initial concerns over the extent of landscaped buffer to the south, quantity of play provision, local roof character, materiality of homes, and relationship with existing homes at the north-western corner of the site.

4. The Development Plan

Development Plan Documents

- 4.1. The Development Plan comprises the Burnley Local Plan which was adopted in July 2018 and sets out the overall strategy, policies and site allocations for the District.
- 4.2. The NPPF is a material consideration in planning decisions.
- 4.3. The policies of relevance to this appeal are set out below with extracts of the Development Plan included for reference at **Documents 11.02 through 11.04**, inclusive.

Burnley Local Plan

- 4.1. Housing allocations across the borough are set out under Local Plan Policy HS1, at paragraph 5.1.8.
- 4.2. The appeal site is allocated for Housing in the Burnley Local Plan, under allocation HS1/2 – Hollins Cross Farm, which states,

“The site is acceptable for around 184 dwellings.

Additional and Site Specific Policy Requirements and Design Principles

- 1) *A mix of dwelling types, including a minimum of 40% 4+ bedroomed detached and 30% 3+ bedroomed detached or semi-detached houses will be expected;*
- 2) *Vehicular access should be from a single point onto New Road. Contributions may be sought for off-site highway improvement work in the vicinity;*
- 3) *No vehicular access will be permitted from Woodplumpton Lane;*
- 4) *Protected Species have been recorded on the site which also includes Priority Habitat (lowland fen). An ecological survey will be required to accompany any planning application which addresses these issues in accordance with Policy NE1;*
- 5) *Appropriate landscaping and boundary treatment should include screening to the southern boundary to reduce the impact on the wider landscape. New planting on the site will need to accord with Policy NE3; and*
- 6) *The presence of known heritage assets (Medieval and earlier) within close proximity of the site would suggest some limited potential for unknown archaeology of local-regional significance and suitable provision will need to be made for archaeological desk based assessment and field evaluation consistent with Policy HE4; and any further investigation or recording works that may be necessary as a consequence of development.*

Supporting Information

- 1) *This is a prominent greenfield site in the open countryside. A scheme of high quality is expected in line with Policy SP5 and lower density detached housing preferred not only to increase/ provide quality and choice, but lower density development would provide greater opportunity for landscaping, planting and minimising impact.*

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2) Lancashire County Council Highways has advised that access via Woodplumpton Lane would not be considered appropriate as there is no footway provision.

3) Contributions may be sought for off-site highway improvement works in the vicinity, both to Glen View Road and for traffic management works to the A646 and Manchester Road signal junction as development is likely to have cumulative impacts on this junction.”

4.3. **Policy HS4 – Housing Developments** sets out that new residential developments should provide:

- Private and functional outdoor space;
- Adequate levels of daylight to habitable rooms;
- 20% of dwellings to be designed to comply with the Part M4(2) of the Building Regulations 2010;
- Recreational public open space to a minimum of 0.3 Ha per 50 dwellings, incorporating (for family led schemes) 0.09 Ha of equipped children’s play space per 50 dwellings;
- A minimum functional size of 1,200m² for POS, overlooked by adjacent properties;
- Incorporation of Sustainable Drainage Systems; and,
- Retention of important existing landscape character, features, trees and habitats.

4.4. **Policy SP5 - Development Quality and Sustainability** sets out that the LPA expect high standards of design, construction, and sustainability, reducing energy and water usage. In terms of design and layout, proposals are expected to respect existing character, incorporate open space and landscaping, and to avoid any unacceptable impacts on the amenity of existing dwellings.

4.5. **Policy NE1 – Biodiversity and Ecological Networks** requires development to seek to maintain and enhance biodiversity and to provide net gains “*where possible*”. Development will not be permitted which adversely affects sites of European or National importance for biodiversity or geology. For local and regional sites, the benefits must outweigh the harm, and applications must be supported by detailed ecological assessments. Impacts should be minimised, mitigated, and compensated for, in that order.

4.6. **Policy NE3 - Landscape Character** expects development to “*respect and where possible, enhance and restore landscape character*”, requiring that proposals:

- Relate well to local topography and built form;
- Ensure that the health and future retention of important landscape features is not prejudiced;
- Avoid detrimental effects on features that make a significant contribution to the landscape;
- Aim to conserve, enhance or restore important natural and historic landscape features;
- Maintain and extend tree cover, where practicable; and,
- Incorporate native screen planting to soften the edge of the building line.

4.7. **Policy CC4 - Development and Flood Risk** requires that development proposals will not result in an increased flood risk elsewhere, with site specific assessments undertaken for sites over 1 hectare in size within Flood Zone 1.

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4.8. **Policy CC5 - Surface Water Management and Sustainable Drainage Systems** expects green infrastructure to be retained and integrated and where possible, with surface water managed on site, rather than discharged from the site. Water should be managed via (in order of preference) infiltration systems, attenuated discharge to a watercourse, attenuated discharge to a surface water sewer, or as a last resort attenuated discharge to a combined sewer.

Material Considerations

4.9. The following are of relevance to the determination and may be referred to in documents associated with this appeal proposal:

- National Planning Practice Guidance (2021);
- Developer Contributions Supplementary Planning Document (Adopted December 2020);
- Air Quality Management: Protecting Health and Addressing Climate Change (Adopted December 2020);
- Chartered Institution of Highways & Transportation 'Planning for Walking';
- Institution of Highways and Transportation (IHT) document, 'Guidelines for Providing for Journeys on Foot'; and,
- 'Burnley Council's Climate Change Strategy' 2022-2026.

5. Planning History

Development Plan Allocation

- 5.1. The site is allocated for housing development in the Burnley Local Plan which was adopted on the 31st July 2018. The Examination in Public occurred over a twelve month period from July 2017 to July 2018. The site is therefore acceptable in principle for residential development.

Temporary Access Road

- 5.2. In addition to the application subject to this appeal, there is a second un-determined application on the site with some relevance to the proposal, under the reference FUL/2022/0522. The application seeks full consent for the: *“Formation of a temporary access road off Woodplumpton Road to Hollins Cross Farm buildings for duration of construction phase - ref: FUL/2022/0149.”*
- 5.3. The temporary road is to provide access to Hollins Cross Farm via Woodplumpton Road during construction of the development subject to this appeal and is intended to enable the complete security of the construction site in the interests of safety. Application FUL/2022/0522 was submitted by Prospect Homes and validated on the 2nd September 2022, in response to a request from the residents of Hollins Cross Farm.
- 5.4. The temporary access track would not be available for construction traffic or future residents of the proposed housing development. The Highways authority have no objection to the principle of the proposal as set out within their formal consultation response (**Document 8.10**).
- 5.5. The application supporting documents and relevant consultation responses are enclosed at **Documents 8.01 through 8.11**, inclusive. It is our expectation that should the appeal be allowed, application FUL/2022/0522 would then be determined by the Local Planning Authority under Delegated powers. The application is effectively held in abeyance pending the determination of the application subject to this appeal.
- 5.6. For the avoidance of doubt, the application for the access track is not subject to an appeal, as the appeal scheme can be delivered without delivery of the access track. The access track could also be addressed as part of a condition relating to the Construction and Environmental Management Plan.

6. Application Process

Timeline Summary

- 6.1. A request for pre-application advice was submitted in January 2020 with a meeting held on the 3rd March 2020, and a written response (**Document 1.12**) issued by the Council on the 6th April 2020.
- 6.2. The Council confirmed in that response that the housing allocation was for 'around 184 dwellings', and that: good design was of key importance; access should only be taken off the A646; access to Hollins Cross Farm should be via the new estate roads; the feasibility proposal of 224 homes was excessive; the development should *"aim to deliver net gain in biodiversity"*; *"Stone or a mix with some dwellings constructed in brick with slate or slate equivalent roofs would be appropriate"*; that expert advice had not been obtained from Lancashire County Council (LCC) acting as the LLFA; and Drainage would likely be a key consideration for residents.
- 6.3. The application subject to this appeal was submitted to the Council on the 22nd March 2022 and validated on the 13th April 2022.
- 6.4. As a result of ongoing discussions with Officers, the Appellant amended the proposals with revisions submitted in September 2022). The revisions are set out in detail within the Planning Statement Addendum provided (**Document 3.01**) and are discussed below, but in summary related to play space provision, building materiality, roof design, additional ecology surveys, and alterations to the highway layout and some residential plot orientations.
- 6.5. The application was initially presented to the Development Control Committee on the 8th December 2022 with a recommendation for approval and was deferred on six grounds set out at Para 6.14.
- 6.6. Additional information was submitted to the Council in January 2023 to address the reasons for deferral, with the Supplementary Planning Statement (**Document 4.01**) setting out how the reasons for deferral had been suitably addressed. The determination of the application was again deferred at a meeting of the Council's Development Control Committee on 18th January 2023 on grounds of Flood Risk alone. The application had again been recommended for approval by officers.
- 6.7. To address the outstanding reason for deferral, the Local Planning Authority (at the cost of the Appellant) commissioned a report to assess all information submitted on Flood Risk and Drainage, and the suitability of the proposed drainage strategy. The Application was subsequently presented to the Development Control Committee on 9th March 2023 at which the Committee resolved to refuse the application due to the perceived non-accordance with Policies CC4 and CC5 of the Local Plan.
- 6.8. Burnley's Head of Planning intervened to refer the application to a meeting of Burnley's Full Council for determination (subject to the view of the Head of Legal Services, who subsequently concurred), due to the Committee's resolution to refuse the application being 'substantially contrary' to the Local Plan, and therefore beyond the delegated authority of the Committee.

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6.9. The Appellant issued a letter to the leaders of the Councils' political parties dated 15th May 2023 (**Document 6.01**) setting out the context of the application before members. At the Full Council meeting on the 7th June 2023, members voted to defer the application back to the Development Control Committee due to perceived outstanding queries on Flood Risk and Drainage, peat removal, and nesting bird surveys. The earliest meeting of the Development Control Committee at which the requested information could be considered, would be post-summer 2024.

Initial application and discussion at Development Control Committee on the 8th December 2022

6.10. Following the pre-application response the detailed application was prepared based on a 200-home scheme and submitted in March 2022.

6.11. Over the nine months from submission to the first Development Control Committee in December 2022, a significant number of amendments were made, including:

- Alteration to the proposed highway layout throughout to address comments raised by Lancashire County Council Highways in May 2022, including changes to road widths, locations of speed control features, and changing private drives to formally adopted highways, with LCC's feedback on the updated proposal anticipated;
- Minor updates throughout to housetype locations as a result of the highway works;
- Rotating the two homes at the south-west corner of the site (plots 60 and 61) to follow the alignment of the homes to the north;
- Amending the location, orientation, and housetype of the house at the north-west corner of the site (plot 49) to address overlooking concerns;
- Assessing and considering additional pedestrian access points to the north and west of the site, to explore options to increase pedestrian permeability onto Glen View Road, Wilkie Avenue, and Footpath 12-6-FP-14;
- Redesigning the water attenuation basin to allow the majority of the feature to be used as recreational open space, whilst having one third of the basin as a permanently submerged pond to aid biodiversity benefits as part of the POS provision;
- Submission of a separate Planning Application (discussed at Paragraph 5.2 of this statement) to provide temporary access to Hollins Cross Farm to the south of the site (reference FUL/2022/0522);
- Setting out the location of two formal play spaces for children and young persons within the open space to the north and east of the site;
- Amending the proposed housetypes to incorporate reconstituted stone to all plots in the place of brick, and pitch roofs in the place of hipped roofs;
- Completing additional ecological surveys as requested by the Greater Manchester Ecology Unit (GMEU) to better understand the existing condition and value of the site; and,
- Undertaking further assessment of the BNG position, and updating the soft landscaping scheme to further reduce the impacts of the proposal on Biodiversity.

6.12. The Officer's Report to the Development Control Committee dated 8th December 2022 (**Document 9.01**) set out that:

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“The proposal seeks to develop a site that is acceptable in principle as it is allocated for housing purposes in Burnley’s Local Plan. The proposed scheme has been amended since first submitted and proposes a high-quality scheme, in line with the requirements of local and national planning policy as set out in the report.”

- 6.13. The Application was however deferred by the Committee on six grounds: Biodiversity Net Gain, Flood Risk, queries over the management and operation of the attenuation basin; Adaptable Homes provision, location of parks to benefit from Open Space Contributions, and queries relating to the conclusions of the Transport Assessment.

Additional submissions and discussions at Development Control Committee on the 18th January 2023

- 6.14. Following the decision to defer the application additional clarification was provided and is set out in detail within the Supplementary Planning Statement (**Document 4.01**), however in respect of BNG, Adaptable Homes, Open Space Contributions, and the Transport Assessment, the statement set out that, as was the case at the time of the decision to defer the application, full details were available and the provision was in accordance, or in excess of, policy requirements. In the case of Open Space provision, the commuted sum was agreed with Officers, and the Committee were simply in disagreement with the Council’s open space team over which facilities should benefit from this contribution – a matter largely beyond the applicant’s control.
- 6.15. We consider that the deferral on these four grounds was unreasonable given the information available and set out within the officers report.
- 6.16. In respect of the other deferral matters, cross sections of the attenuation basin were prepared by the appellant, and clarifications provided on the maintenance of the basin.
- 6.17. The application was again recommended for approval, however on the day of the Committee an additional representation from a Flood Risk Consultant was provided to Burnley Council (**Document 4.14**), produced on behalf of a ‘residents group’, and only circulated to some members of the Committee ahead of the meeting (and not to Prospect Homes).
- 6.18. A motion to approve the application was tabled, with a clarification from officers that any approval would be subject to there being no further objection from the LLFA once they had been able to review the flood risk report in full, and therefore the recommendation to approve remained in place. The motion did not pass.
- 6.19. A motion to refuse the application on grounds of biodiversity and flooding impacts was tabled.
- 6.20. Following discussion by members on whether the application could be appealed due to non-determination if it were deferred a second time the applicant verbally agreed an Extension of Time for two months, to negate the Council’s concerns over an appeal at that stage. Prospect Homes were still demonstrably keen to try to resolve Committee members concerns.

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- 6.21. The Committee ultimately resolved to defer the application *“in light of the late submission which not all members of the committee had seen or had had a chance to consider.”*

Additional submissions and discussions at Development Control Committee on the 9th March 2023

- 6.22. Ahead of the DC Committee Meeting in March 2023, in order to address the concerns over the flood risk and drainage strategy proposed, the Planning Authority proposed that an external independent assessment of all information submitted in respect of water management should be instructed, at the cost of the applicant.
- 6.23. The Planning Authority approached a number of consultants, and instructed Sweco to undertake the assessment (**Document 9.07**).
- 6.24. The report by Sweco stated at page 7 that *“our assessment concludes that groundwater and any associated potential flood risk is not expected to be a significant constraint to the development”*,
- 6.25. The Officer’s report (**Document 9.06**) presented the development to DC Committee with a recommendation to approve for a third time:

“Officers consider that the information provided by SWECO has addressed the late concerns presented by the residents group prior to the December committee. They consider that the information is therefore conclusive in that potential flood risk as a result of groundwater has been considered and it is not expected to be a significant constraint to the development.

Policy CC4 of the Burnley Local Plan requires that development does not result in increased flood risk from any source or other drainage problems, either on the development site or elsewhere. This is supported by the provisions of the National Planning Policy Framework. On consideration of all the information provided, officers are satisfied that the development is acceptable and in accordance with both national and local planning policy in this regard and that this is not a suitable reason to refuse the application.

Other matters for consideration are discussed in detail in the previous committee reports appended.”

- 6.26. An objection on grounds of Flood Risk and Drainage was again submitted to the Planning Authority by Aegaea (**Document 5.12**) and a Committee Update Report was therefore issued by Officers to Members ahead of the Committee (**Document 9.08**). This Update confirmed in respect of the concerns raised within the objection letter from Aegaea that:

“The Lead Local Flood Authority, as statutory consultee, have also been re-consulted and they have confirmed they have nothing further to add in addition to their formal responses previously sent. For clarification, they have no objection and recommend various conditions set out in the report. (Those conditions are 23-27 in the report). They have also confirmed specifically [that they] are satisfied that groundwater can be considered sufficiently when the final design of the drainage is agreed with the LPA under the relevant conditions.

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In conclusion, Officers remain satisfied that the site is acceptable, and with the inclusion of the conditions as set out in the report to retain control of the detail of the drainage system to the Local Planning Authority, they are satisfied that the provisions of local and national planning policy are met in this regard.”

- 6.27. At the Committee Meeting a motion to refuse planning permission against officer recommendation passed (by a vote of 7 to 6 in favour) that:

“planning permission be refused as the application did not meet the requirements of Burnley’s Local Plan 2018 policies CC4 Development and Flood Risk and CC5 Surface Water Management and Sustainable Drainage Systems (SuDS) due to the flooding risk that this development would create for the local area”.

- 6.28. The minutes of the meeting (**Document 9.09**) set out that:

“Prior to the vote on the resolution to refuse the planning application the Committee was advised by the Head of Housing and Development Control that the committee would not have delegated authority to pass such a resolution as this would be a decision that, in his professional opinion, was substantially contrary to the Local Plan and Local Plan Policies.

The committee was further advised by the Senior Solicitor that, under the Council’s constitution, the Committee did not have delegated powers to pass a resolution to refuse as this would be a decision that was substantially contrary to the Local Plan. The vote to refuse would be taken but, if carried, it would have no effect. The decision would be referred to the Head of Legal and Democratic services to confirm in writing within 5 working days after the decision of the Committee, in consultation with the Chair, whether she agreed with the view of the officers. If she agreed that the decision was substantially contrary to the local plan it would be referred to the Full Council for determination.”

- 6.29. Following the Committee Meeting, the Decision of Head of Legal and Democratic Services was issued on the 16th March confirming 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”* (see **Document 9.10**).”

Additional submissions and discussions prior to referral to Full Council

- 6.30. The Development Control Committee’s resolution to refuse the application was on the sole grounds of Flood Risk. Notwithstanding the technical consultees positions, detailed information before the Council and three officer recommendations for approval, discussion continued with Officers to agree a further condition to seek to provide additional comfort to members in respect of Flood Risk.

- 6.31. The condition restricts c. 2/3rd of the development until the attenuation basin is 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 basin if necessary. Prospect would be able to progress c. 1/3rd of the development, thus avoiding the operational risk of further delay. The proposed condition stated,

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“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.”

7. Failure to Determination the Application

- 7.1. The Officer reports and appendices are enclosed at **Documents 9.01 through 9.12**. These clearly identify the detailed assessment of the application carried out by officers and describe those concerns of members raised at the Development Control Committee in December 2022, January 20223, and March 2023.
- 7.2. The consistent professional opinion and advice of officers has been that the application constitutes sustainable development and should be approved subject to suitable conditions and completion of a S106 legal obligation.

Full Council Meeting – 7th June 2023

- 7.3. At the extraordinary meeting of Burnley's Full Council on the 7th June 2023, Councillors voted to defer the application back to the Development Control Committee for determination. Minutes of the meeting are not publicly available at the time of writing, however Democracy Officers confirmed in writing on the 9th June 2023 (**Document 10.02**) that:
- 7.4. *“Cllr Birtwistle moved (as altered by Cllr's Fewings and Cunliffe) and seconded by Cllr Baker (both alterations accepted) to defer the matter to the DC Committee until the full report of the over winter survey on flooding has been received and considered by the relevant experts on the flooding together with a further report on the ecological and ~~and~~ climate change effect of the removal of peat and a further ecological survey relevant to the nesting of birds through the whole breeding season of protected species and clarification on whether 'lowland fens' habitat is available.”*
- 7.5. Due to the survey season restrictions on nesting bird surveys, the deferral would effectively prevent determination of the application until completion of surveys from March to August 2024, with the first meeting of the Development Control Committee at which a decision could therefore be made, being post-summer 2024.

8. Case for the Appellant

- 8.1. The failure of Burnley Council to determine application FUL/2022/0149, given the extent of technical information, lack of objection from consultees and positive Officer recommendations, is wholly unreasonable.
- 8.2. The intention to refuse consent in March 2023 (prior to intervention by the Head of Planning) was solely on the basis of Flood Risk and Drainage. We consider this to be the primary technical reason for the failure to determine the application, however we also note members' requests at Full Council for additional information in respect of nesting birds and peat removal. On this basis we address these three matters in turn below.
- 8.3. Whilst the Appellant worked with officers to achieve a positive recommendation on the site, the history of deferrals and resolution to refuse the application at the Development Control Committee provides no comfort that in the event of the application being considered by the DC Committee post-summer 2024 following further technical assessment, that members would vote to approve homes on Housing Allocation HS1/2.

Principle of Development

- 8.4. The Principle of Development has been assessed at length by the Planning Authority and is set out within the three officer reports (including Supplementary Reports) to the Development Control Committee (**Documents 9.01 through 9.12**). The most recent report to Committee set out that:

"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 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.'

... The application site is one of the sites identified for housing, identified as HS1/2- Land at Hollins Cross Farm, and is identified as a Greenfield site.

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 set out in HS1/2, together with the requirements of other policies elsewhere in the plan.

The principle of developing the site for residential purposes is therefore established through the Local Plan, taking into account the economic, social and environmental objectives of sustainable development.

...Moreover, the allocated sites and their potential impacts have been subject to a high level of scrutiny by third parties and examination by the Planning Inspectorate as part of the Local Plan adoption."

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- 8.5. The application was supported by all information required by Policy HS1/2 in relation to the site specific policy requirements, and is considered by the appellant and officers to accord with all other relevant policies within the Local Plan.
- 8.6. The Principle of Residential Development on the site has been established from a policy perspective.

Flood Risk and Drainage

Overview of the Case

- 8.7. The outstanding concern of Councillors at the Development Control Committee on the 9th March 2023 was that ground water (as opposed to surface water) and an associated elevated water table, could interfere with the proposed SUDs basin, resulting in the proposed drainage strategy not being sufficient to attenuate surface water runoff, potentially resulting in overtopping of the system and flooding of adjacent properties.
- 8.8. This perceived concern stemmed from the location of the SUDs basin being at the lowest part of the site, where existing uncontrolled pluvial water from the higher ground accumulated. This long-term water accumulation due to impermeable strata below resulted in the formation of peat, which then absorbs and retains water, creating a permanently wet area.
- 8.9. Despite intrusive investigations confirming no ground water exists across the majority of the site, one area of investigation within the peat resulted in test holes filling with water held within the existing peat. The standing water therefore impacts on any testing into the presence of ground water. However the technical evidence demonstrates that given surrounding investigations, ground water is not considered to be a restriction on development. This position is set out by the technical consultants in **Documents 2.16, 2.17a, 2.17b, 2.17c, 2.22, 3.14, 3.15, 4.02, 4.03, 4.04, 4.05, 4.06, 5.05a, 5.05b, 5.05c, 5.05d, 5.05e, 5.05f, 5.06, 5.07, and 9.07.**
- 8.10. The excavation of the SUDs basin will enable the appellant to conclusively confirm the existence or otherwise of groundwater, by removing the existing standing water and water-retaining strata, which will in turn remove interference of surface water from ground water testing. The over-winter ground water assessment requested by the Council is fully expected to return the same results as have already been provided to the Council following intrusive testing, i.e. that the tests in the area of standing surface water will experience surface water interference, and the remainder of the tests in locations unaffected by standing water will demonstrate no groundwater presence.
- 8.11. The SUDS basin is to be lined with an impermeable layer, and will therefore act independently to any existing groundwater in any event.

Policy Context

- 8.12. The policies upon which the Development Control Committee sought to refuse the application are CC4 and CC5. Given the length of these policies these are not provided here in full, however are included in full as **Documents 11.02 and 11.03.**

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- 8.13. For the avoidance of doubt, it is the position of officers that the proposed development, if approved subject to the conditions as set out at paragraph 10 of the Report to Full Council dated 7th June 2023, would accord fully with policies CC4 and CC5. This is a position adopted by the Head of Planning and supported by the Head of Legal and Democratic Services. This is a position the applicant fully concurs with.
- 8.14. Notwithstanding this, the addition of the condition set out above at paragraph 6.31 would provide further comfort on flood risk being thoroughly mitigated.

Grounds for appealing the Council's position

- 8.15. Prospect has never contested the existence of a current flood risks adjacent to the site, with clear evidence of historic flooding from surface water run-off. A surface water run-off rate of 35.8l/s has been agreed with the LLFA and United Utilities, a significant improvement on the uncontrolled rate of 170l/s which is associated with the current flooding.
- 8.16. The LLFA have confirmed repeatedly that they have no objection to the proposals, subject to conditions requiring the submission of (**Documents 5.11**):
- Final Surface Water Sustainable Drainage Strategy;
 - Construction Surface Water Management Plan; and
 - Sustainable Drainage System Operation and Maintenance Manual Verification Report of Constructed Sustainable Drainage System
- 8.17. The response provided by the LLFA on the 6th January ahead of the second committee set out that (LLFA emphasis in both instances):

*"The Lead Local Flood Authorities **position remains unchanged**. We have reviewed the further information submitted (Supplementary Planning Statement, December 2022, Prospect Homes and REFA) and are satisfied that all required details can be secured by applying, in full, the conditions recommended in our previous response (dated 11th October 2022), however, in light of the further information received, we recommend that paragraph 2 of our previous recommended condition 2 (Final Surface Water Sustainable Drainage Strategy to be submitted) is updated to read:*

"The detailed surface water sustainable drainage strategy shall be based upon the site-specific flood risk assessment and indicative drainage strategy and drainage clarification report submitted and sustainable drainage principles"...

- 8.18. Part One of Policy CC4 confirms that *"The Council will seek to ensure that new development does not result in increased flood risk from any source or other drainage problems, either on the development site or elsewhere."* The evidence presented to date demonstrates that this is achieved by the development, and standard conditions fully control this aspect. In the highly unlikely event of the on-site attenuation systems (the basin and oversized pipework) not being sufficient to achieve this, the proposed condition on phasing ensures development land is retained to allow for enlargement of the basin. This Condition was proposed by the applicant to address outstanding concerns of Members; it is not considered to be necessary by any means to make a development that would otherwise be unacceptable, acceptable.

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- 8.19. Part two and three of Policy CC4 are not of direct relevance to this proposal. The drainage system does ultimately discharge via a culvert which has been surveyed, however this is beyond the land under the control of the applicant. The run-off rates agreed with the LLFA and United Utilities are entirely appropriate to feed into this culvert².
- 8.20. In accordance with Part Four of Policy CC4, the site is entirely within Flood Zone One. On this basis Part Five of Policy CC4 does not apply to this determination.
- 8.21. In accordance with Part Six of Policy CC4, the proposal is supported by a detailed site-specific Flood Risk Assessment, which has been reviewed by the LLFA, with no objection to the proposal on these grounds subject to standard conditions.
- 8.22. Part seven of the Policy is not of relevance, and Part eight is fully accorded with through the conditions proposed which have been proposed by Officers.
- 8.23. The proposal therefore fully accords with Policy CC4 as set out by the officers' report to Committee in March 2023 (**Document 9.06**): *"On consideration of all the information provided, officers are satisfied that the development is acceptable and in accordance with both national and local planning policy in this regard [CC4] and that this is not a suitable reason to refuse the application."*
- 8.24. In respect of Policy CC5, Part One, the site is allocated for residential uses, and development will by necessity result in the loss of Green Infrastructure.
- 8.25. In respect of Part One (b) and Two of Policy CC5, the Geo-Environmental investigation report 21061/GEIR (**Document 2.25a and 2.25b**), section 5.12 sets out that *"a ground infiltration system of surface water drainage will be inappropriate"*.
- 8.26. The Drainage and Levels Statement (**Document 2.16**) continues that: *"It is thus proposed to discharge surface water from this site via sewers and pond to the existing watercourse/culverted watercourse to the North East of the development"*. As on-site permeability is not feasible, in accordance with Part Two of Policy CC5, the surface water is designed to be attenuated and discharged to a watercourse, in accordance with the hierarchy defined by policy.
- 8.27. The third and final part of Policy CC5 requires that:
- "In respect of major developments, SuDS will be required and surface water discharges from developed sites should be restricted to QBar rates (mean annual greenfield peak flow).*
- A drainage strategy should be submitted detailing the following:*
- a) The types of SuDS and/or measures;*
 - b) Hydraulic design details/calculations;*

² Discussed in detail at Page 2 of the Drainage Query Clarification Report, dated December 2022 (Document X)

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c) Pollution prevention and water quality treatment measures together with details of pollutant removal capacity as set out in the current CIRIA SuDS Manual C753 or equivalent and updated local or national design guidance; and

d) The proposed management and maintenance regime for the lifetime of the development.”

- 8.28. All of this detail has been provided to the Planning Authority, with no objection to the submitted technical evidence lodged by either the LLFA or United Utilities.
- 8.29. Draft Conditions 23 to 27 ensure the Council maintain further control of all Flood Risk and Drainage matters.
- 8.30. We conclude that there is no justifiable reason on grounds of Flood Risk and Drainage to withhold determination of the application, and that refusal or deferral on grounds of non-accordance with Policies CC4 and CC5 of the Local Plan cannot be substantiated. This position is reinforced by the statements from the Head of Planning and Head of Legal and Democratic Services, referenced above.

Nesting Bird Surveys

- 8.31. For context, initial consultation responses to the original submission included a request by the Greater Manchester Ecology Unit (GMEU) for additional ecological surveys to better understand the existing condition and value of the site. These surveys were undertaken in 2022 ahead of the first Development Control Committee Meeting.
- 8.32. Nesting Bird Surveys specifically were not raised as an area of concern by Members at any of the three Development Control Committees. This matter was however raised by Councillors at Full Council in June 2023 on the basis that Policy HS1/2 sets out at Part Four that:
- “Protected Species have been recorded on the site which also includes Priority Habitat (lowland fen). An ecological survey will be required to accompany any planning application which addresses these issues in accordance with Policy NE1;”*
- 8.33. The third Officer Report to Committee dated 9th March 2023 confirmed that:
- 8.34. *“In order to consider the impact of the development on biodiversity, the Local planning Authority takes advice from the Greater Manchester Ecology Unit (GMEU). GMEU have confirmed that they are satisfied in relation to the information submitted, given that the detailed surveys for bats, great crested newts, water vole and breeding birds found no significant issues in 2020, the PEA found no constraints relating to other protected species, and because the site has been revisited in 2021 and 2022. They do however advocate that some of the surveys are updated prior to development if permission is granted. A suitably worded condition is included to ensure that this is done.”*

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- 8.35. In support of the application, a suite of ecology surveys were undertaken and submitted for consideration, including a Preliminary Ecology Assessment dated November 2019 (**Document 2.35**), a Botanical Walkover and Invasive Species report dated December 2021 (**Document 2.08**), Ecology Surveys dated October 2020 (**Document 2.18**) and addition Water Vole Surveys dated September 2021 (**Document 2.45**).
- 8.36. In respect of Policy HS1/2, the Local Plan was adopted in 2018 with the evidence base naturally pre-dating this. The ecology reports submitted for consideration, and assessed by GMEU, are all therefore more recent than the evidence base of the Local Plan.
- 8.37. In September 2022, Biora confirmed in writing to GMEU that “*none of the grassland habitats on site are of priority habitats*” (**Document 3.16**). This letter was issued to GMEU in response to comments received on the 27th May 2022, seven months prior to the initial Committee meeting.
- 8.38. It is the opinion of the applicant and GMEU that there is no Priority Habitat grassland on the site at the time of the determination and as such this aspect of Policy HS1/2 has been fully addressed.
- 8.39. In respect of breeding birds, the application was presented to Members on all four occasions with proposed draft conditions requiring that:
- *Prior to the clearance of the site a bird nesting and bat roosting plan shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the plan and any mitigation implemented in accordance to identified timings.*
- Reason: In the interest of protection of biodiversity and ecological networks in accordance with the provisions of Policy NE1 of the Burnley Local Plan and the provisions of the National Planning Policy Framework.*
- *No works to trees, hedge or shrub or earthwork shall occur between the 1st March and 31st August in any year unless a detailed bird nest survey by a suitably experienced ecologist has been carried out immediately prior to clearance and written confirmation provided that no active bird nests are present which has been agreed in writing by the local planning authority.*
- Reason: In the interest of protection of biodiversity and ecological networks in accordance with the provisions of Policy NE1 of the Burnley Local Plan and the provisions of the National Planning Policy Framework.*
- 8.40. It is the view of the appellant that the Council’s statutory consultee has provided advice to the Planning Authority in respect of nesting birds, additional surveys have been undertaken during the determination of the application, and the timing for additional surveys, as required by the potential conditions above, are appropriate.
- 8.41. Based on the above standard conditions, it is entirely unreasonable to withhold planning consent on the site prior to the completion of these surveys.

Peat Removal

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- 8.42. The Surface Water Attenuation Basin to the north of the site is situated on an area underlain by peat, with impermeable strata below this. The formation of the SUDs basin in order to accord with Policies CC4 and CC5 will require some excavation of the current soils, including peat.
- 8.43. As shown on the plan included as **Document 7.01**, the extent of the peat is limited to the northern part of the site only.
- 8.44. In February 2023 the Case Officer consulted with GMEU in respect of the peat removal, with GMEU responding to confirm that (**Document 5.13**):
- “Natural England are pushing for “restorable” peat to be regarded as something you should not build on, but currently there is no guidance locally or nationally to back this up. It is also not included as a habitat in the biodiversity metric”.*
- 8.45. The response from GMEU additionally noted the peat would be “*degraded peat under agricultural land*” and provided a letter from Natural England to the Greater Manchester Combined Authority in the context of the examination of the Greater Manchester Joint Spatial Plan (which is not of direct relevance to Burnley or the Site) (**Document 5.14**) which set out:
- “there has not yet been an official change to national policy provision for protecting peat from development and therefore, no material change in circumstance. However, based on our ongoing work and discussions with Defra on this matter, Natural England will be proposing a change to policy as part of our formal consultation response to national planning policy reforms. We wish to take the opportunity to bring this to the Inspectors attention as part of the Examination process.”*
- 8.46. Natural England and GMEU have confirmed there is no national or local policy position that seeks to prevent the loss of peat.
- 8.47. We would also note that the letter from Natural England was submitted in respect of three draft strategic allocations with existing peat extending to 445 hectares, 30 hectares, and 102 hectares.
- 8.48. The Council has requested additional information into the climate change impacts of peat removal due to the emission of carbon dioxide, however Burnley’s Climate Change Strategy 2022 - 2026 makes no reference to peat, and the sole reference to peat within the Development Plan is in the context of Wind Energy Development (Policy CC3).
- 8.49. There is no policy within the Development Plan seeking to restrict residential development on account of the loss of peat, and having taken the comments of GMEU into account it is the consistent view of Officers that the application should be supported.
- 8.50. Options to revise the location of the attenuation basin have been explored by the Appellant in the period following the Full Council Meeting, however are not considered feasible due to the topography of the site and access requirements.

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8.51. We therefore consider that to delay the determination of the application due to any potential impacts of peat removal on an allocated housing site, is unreasonable, particularly in the context of multiple committee resolutions which made no reference to peat.

Proposal Benefits

8.52. The key benefits of the development are considered to be:

- Delivery of 200 new homes on an allocated housing site, contributing significantly to Burnley's housing delivery requirements;
- Provision of 20 new affordable homes on-site, equating to 10% and significantly in excess of the policy requirements;
- Inclusion of a wide range of house-types that reflect the local character, promoting the site as an inclusive and sensitive development;
- Inclusion of a significant number of semi-detached and four-bedroom detached dwellings in line with the Council's intentions to re-balance the housing market which is currently dominated by smaller terraced properties;
- Implementation of managed Sustainable Drainage Systems to reduce existing surface water runoff which detrimentally affects existing properties in the area;
- Provision of significant areas of on-site Public Open Space, extending to two hectares;
- Significant planting to the southern boundary and planting throughout the site;
- A Biodiversity Net Gain of 10%, significantly in excess of Policy requirement to deliver only a gain "where possible"
- Significant economic benefits, including in terms of investment and jobs throughout the construction phase;
- Gift-aiding profits from the Prospect Homes development to the Riverside Housing Association to fund a wide range of social benefits including affordable homes and care and community support services;
- Creating an Apprentice position within Prospect's site team and seek to recruit this position through local colleges;
- Supporting local colleges with material supplies, work experience and careers events; and,
- Supporting local community groups through sponsorship, materials for specific projects and staff time at events.

8.53. The above benefits are considered to be significant and demonstrate that the proposal will deliver high quality family-focused homes, with a layout that delivers significant areas of open space, landscaping and net gains in biodiversity. The material benefits of the scheme are considered to demonstrably outweigh the perceived harms, due to their scale and the management of any potential harms already secured by the planning conditions proposed by Officers.

9. Conclusion

- 9.1. Since the validation of the application in April 2022, the proposal has on four occasions been presented to Councillors for determination with an Officer recommendation to approve, subject to Conditions and a S.106.
- 9.2. The fourth reporting of the application was at a meeting of Full Council, following an earlier resolution of the Development Control Committee to refuse the application due to perceived non-accordance with Policies CC4 and CC5 of the Local Plan relating to Flood Risk and Sustainable Drainage. This resolution was not considered by the Head of Planning or Head of Legal and Democratic Services to be a decision that accorded with the Council's Scheme of Delegation and would have been '*substantially contrary*' to the Local Plan.
- 9.3. At the extraordinary meeting of Full Council on the 7th June 2023, Members again decided to defer the determination of the application for a fourth time on the perceived grounds of flood risk, potential impact on nesting birds and implications of peat removal.
- 9.4. A wealth of technical information has been submitted to the Council in respect of Flood Risk and Drainage demonstrating that the proposal fully accords with Policies CC4 and CC5. The Council previously instructed an independent external assessment of the drainage strategy and, following this, Officers maintained their position in recommending the application be approved subject to standard conditions.
- 9.5. Notwithstanding this, a further condition has been proposed by the Appellant to phase development to allow for part of the site to progress construction, whilst the remainder would be subject to further verification on groundwater during the formation of the basin.
- 9.6. In respect of nesting bird surveys, draft Conditions attached to all four officer recommendations to approve the application required survey works to be undertaken prior to site clearance. Undertaking these surveys prior to determination of the application is not considered an appropriate or justifiable request, given the extent of survey work already available to the Council on nesting birds.
- 9.7. In respect of peat removal, there is no Development Plan policy in place to restrict development on this basis. Officers have consulted with the Greater Manchester Ecology Unit on this matter, who maintain that planning permission should not be withheld on this basis.
- 9.8. The Appellant contends that officers were fully justified in recommending the application for approval on all four occasions and that there are no grounds for delaying determination of the application at this time. The site is the second largest housing allocation (by unit numbers) within the Borough, and therefore makes a very significant contribution to maintaining delivery of new homes.
- 9.9. The proposals will give rise to no significant and demonstrable adverse impacts. There are no policies in the NPPF that indicate development should be refused. For these reasons the Appellant considers the proposal to be sustainable development for which planning permission should be granted.

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Appendices

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Appendix A Table of Referenced Documents

Full Document List – Hollins Cross

Ref.	Document	Reference/Author
Section 1 – Pre-application		
1.01	Request for Pre-Application Advice Form 16.12.19	Burnley Council
1.02	Hollins Cross Pre-App Letter 13.01.20	Savills
1.03	Hollins Cross Pre-App Cheque letter 06.01.20	Savills
1.04	Desk-based Archaeological Assessment (SA-2019-92) 10.19	University of Salford
1.05	Flood Risk Assessment and Drainage Strategy 11.12.19	Hydrock
1.06	Topographical Plan (P19186) Rev A @ AO	SiteScan
1.07	Indicative Layout (M4655 SK 02) @ A1	Nicol Thomas
1.08	Preliminary Ecological Appraisal 26.11.19	BWB
1.09	Preliminary Geotechnical Report (C8498) 11.19	Sirius
1.10	Site Access Options Appraisal (P01.01) 03.12.19	Hydrock
1.11	Responses Archaeology, Ecology, Contaminated land, Education 14.02.20	Burnley Council
1.12	Feedback Letter (PRE-2020-0020) 06.04.20	Burnley Council
Section 2 – Original Submission Documents (March-May 2021)		
2.01	Affordable Housing Plan (HCBHP01) 05.21 @ AO	Woodcroft Design
2.02	Affordable Housing Statement 03.22	Savills
2.03	Air Quality Assessment (102625) 08.11.21	Miller Goodall
2.04	Arboricultural Impact Assessment Inc. Tree Survey (9020.001) 11.21	TEP
2.05	Archaeological Assessment (SA201992) v1 10.19	University of Salford
2.06	Areas Plan (HCBAP01) 05.21 @AO	Woodcroft Design
2.07	BNG Calculation 19.08.21	Biora
2.08	Botanical, Invasive and BNG Report (SE095701 E02b_BNG_AS) 14.12.21	Biora
2.09	Boundary Treatments (WD2090BT01) Rev A 08.21 @ A0	Woodcroft Design
2.10	Boundary Treatments Brick Wall (BT002) 12.21 @ A3	Woodcroft Design
2.11	Boundary Treatments Close board (BT001) 12.21 @ A3	Woodcroft Design
2.12	Colour Layout (WD2090DL01) 05.21 @AO	Woodcroft Design
2.13	Construction Method Statement 04.21	Woodcroft Design
2.14	Crime Impact Statement (APM 0308.21) 03.21	A.P Martin
2.15	Design and Access Statement	Woodcroft Design
2.16	Drainage and Levels Statement (21061) 28.02.22	REFA
2.17a	Drainage Strategy (210611001) Rev B @ A1 Sheet 1	REFA
2.17b	Drainage Strategy (210611002) Rev B @ A1 Sheet 2	REFA
2.17c	Drainage Strategy (210611003) Rev B @ A1 Sheet 3	REFA
2.18	Ecology Surveys (HCFBWBZZRPLE0001_PSS) 12.10.20	BWB
2.19	Electricity Point of Connection Plan 01.06.21	Electricity North West
2.20	Energy Efficiency Statement v1.1 24.01.2021	Element Sustainability
2.21	Existing Site Plan (HCBESP001) 05.21 @ AO	Woodcroft Design
2.22	Flood Risk Assessment (680259R1 (02)FRA) Rev02 14.12.21	RSK
2.23	Detached Garages Elevations (SG001) 12.21 @ A3	Prospect Homes
2.24	Gas Point of Connection Plan (100031072) 21.04.21 @ A4	Cadent
2.25a	Geo Environmental Investigation Report (21061GEIR) 02.09.21 Pt1	REFA
2.25b	Geo Environmental Investigation Report (21061GEIR) 02.09.21 Pt2	REFA
2.26	Housetypes Brochure inc. Dims. 12.21	Prospect Homes
2.27	Landscape Management Plan 27.08.21	ldverde
2.28a	Landscape Scheme Sheet (19398) Rev B 14.12.21 @ A0 Sheet 1	ldverde
2.28b	Landscape Scheme Sheet (19398) Rev B 14.12.21 @ AO Sheet 2	ldverde
2.28c	Landscape Scheme Sheet (19398) Rev B 14.12.21 @ AO Sheet 3	ldverde
2.28d	Landscape Scheme Sheet (19398) Rev B 14.12.21 @ A0 Sheet 4	ldverde
2.29	Materials Finishes (WD2090MF01) 08.21 @ AO	Woodcroft Design
2.30	Noise Impact Assessment (102625) 09.09.21	Miller Goodall
2.31	Parking Schedule	N/A
2.32	Phasing Plan (HCBPP01) 05.21 @AO	Woodcroft Design
2.33	Planning Layout (WD2090DL01) 05.21 @ AO	Woodcroft Design
2.34	Planning Statement 05.22	Savills

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2.35	Preliminary Ecological Appraisal 26.11.19	BWB
2.36	Refuse Layout (WD2090RL01) Rev A 08.21 @ AO	Woodcroft Design
2.37	Roof Plans (HT22RP 21A) Rev A 08.04.22 @ AO	Prospect Homes
2.38	Site Location Plan (WD2090LP01) Rev A 03.21 @ A1	Woodcroft Design
2.39	Statement of Community Involvement 03.21	Savills
2.40	Street Scenes & Cross Sections (WD2090SS01) Rev A 12.21 @ AO	Woodcroft Design
2.41	Street Scenes X-section location (WD2090SL01) Rev A 05.21 @ AO	Woodcroft Design
2.42a	Topographical Survey (PRO.TS.13) 23.04.21 @ AO Sheet 1	SurveyEng
2.42b	Topographical Survey (PRO.TS.13) 23.04.21 @ AO Sheet 2	SurveyEng
2.42c	Topographical Survey (PRO.TS.13) 23.04.21 @ AO Sheet 3	SurveyEng
2.43	Transport Statement Inc. Travel Plan 09.21	Eddisons
2.44	Water Mains Point of Connection	United Utilities
2.45	Water Vole Survey Report (SE095701 _WV_J01a_AS) 28.09.21	Biora
2.46	Application Form	Burnley Council
Section 3 – Documents Submitted up to December 2022 Committee (May-December 2022)		
3.01	Planning Statement Addendum 09.09.22	Savills
3.02	Pos Plan V2 (HC-POS-002) 08.22 @ AO	Woodcroft Design
3.03	Boundary Treatments (WD20-90-BT01) Rev B 08.21 @ A0	Woodcroft Design
3.04	Street Scenes X-Sections (WD20-90-SS01) Rev B 12.21 @ A0	Woodcroft Design
3.05	Rev Colour Layout (WD20-90-DL01) Rev B 05.21 @ A0	Woodcroft Design
3.06	Materials Finishes (WD20-90-MF01) Rev B 08.21 @ A0	Woodcroft Design
3.07	Refuse Layout (WD20-90-RL01) Rev B 08.21 @ AO	Woodcroft Design
3.08	Detail Layout (WD20-90-DL01) Rev D 05.21 @AO	Woodcroft Design
3.09	House Types Brochure 08.21	Prospect Homes
3.10	Cromwell 2	Prospect Homes
3.11	Cromwell Weathered Rustic	Prospect Homes
3.12a	Soft Landscape Proposals (GL1942 01C) Rev C 20.10.22 @ A0 Sheet 1	Golby+Luck
3.12b	Soft Landscape Proposals (GL1942 01C) Rev C 20.10.22 @ A0 Sheet 2	Golby+Luck
3.12c	Soft Landscape Proposals (GL1942 01C) Rev C 20.10.22 @ A0 Sheet 3	Golby+Luck
3.12d	Soft Landscape Proposals (GL1942 01C) Rev C 20.10.22 @ A0 Sheet 4	Golby+Luck
3.13	Landscape and Visual Appraisal 08.22	Ryder
3.14	Causeway Flow Pre&Post Development Vols 30.08.22	Causeway
3.15	Greenfield Runoff Rate (3600889577) 30.08.22	HR Wallingford
3.16	Biora Ecology Response (16.09.22)	Biora
3.17	Biodiversity Enhancement Proposals (SE0957-03_D04_GS) 15.09.22	
3.18	BNG Calculations Update 15.09.22	
3.19	Detail Layout (WD20-90-DL01) Rev H 05.21 @AO	Woodcroft
3.20	Affordable Housing Plan (HCB-AHP01) Rev B 12.21 @A0	Woodcroft
3.21	Materials Finishes (WD20-90-MF01) Rev J 08.21 @ A0	Woodcroft
3.22	Refuse Layout (WD20-90-RL01) Rev J 08.21 @ A0	Woodcroft
3.23	Boundary Treatments (WD20-90-BT01) Rev J 08.21 @ A0	Woodcroft
3.24	Maintenance and Management Plan (WD20-90-MP01) Rev J 05.21 @A0	Woodcroft
3.25	Detail Layout (WD20-90-DL01) Rev J 05.21 @AO	Woodcroft
3.26	Boundary Treatments (WD20-90-BT01) Rev H 08.21 @ A0	Woodcroft
3.27	Materials Finishes (WD20-90-MF01) Rev H 08.21 @ A0	Woodcroft
3.28	Refuse Layout (WD20-90-RL01) Rev H 08.21 @ A0	Woodcroft
Section 4 – Documents Submitted up to January 2023 Committee (December 2022-January 2023)		
4.01	Supplementary Planning Statement 12.22	Savills
4.02	Appendix A - Drainage Note	REFA
4.03	Appendix B - Greenfield runoff rates	HR Wallingford
4.04	Appendix C - Culvert Capacity Plan	REFA

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4.05	Appendix D - Drainage plan and Basin sections	REFA
4.06	Appendix E - Management Company Areas	Woodcroft Design
4.07	Appendix F - Plan of M4(2) dwellings	
4.08	Appendix G - Schedule of M4(2) dwellings	N/A
4.09	Appendix H - Note on M4(2) accessibility	N/A
4.10	Appendix I - Footpath Link plan	N/A
4.11	Appendix J - POS Contribution	Woodcroft Design
4.12	Appendix K Transport Note	Eddisons
4.13	Appendix L - Access Plan	Eddisons
4.14	Aegaea Report (AEG0904_BB11_Burnely_07) 18.01.23	Aegaea
Section 5 – Documents Submitted up to March 2023 Committee (January-March 2023)		
5.01a	Glen View Road Topo (PRO.TS.13) Rev A 23.04.21 Sheet 1 @ A0	SurveyEng
5.01b	Glen View Road Topo (PRO.TS.13) 23.04.21 Sheet 1 @ A0	
5.01c	Glen View Road Topo (PRO.TS.13) 23.04.21 Sheet 2 @ A0	
5.01d	Glen View Road Topo (PRO.TS.13) 23.04.21 Sheet 3 @ A0	
5.02a	Flood Risk Assessment (680259-R1 (02)-FRA)) 12.2 pt1	RSK
5.02b	Flood Risk Assessment (680259-R1 (02)-FRA)) 12.21 pt2	
5.02c	Flood Risk Assessment (680259-R1 (02)-FRA)) 12.21 pt3	
5.03	GIR (21061-GEIR-01) 02.12.22	REFA
5.04	SI To Delineate Peat (HM21061-REV1) 30.11.22	
5.05a	Further Trial Pit locations 22.10.22	
5.05b	Trail Pit 1 photo 22.10.22	
5.05c	Trail Pit 2 photo 22.10.22	
5.05d	Trail Pit 3 photo 22.10.22	
5.05e	Trail Pit 4 photo 22.10.22	
5.05f	Trail Pit 5 photo 22.10.22	
5.06	Trial Pit Location Plan (2106107) 27.01.23 @ A2	
5.07	Trail Pit Log (21061) 02.02.23	
5.08a	- Drainage Strategy (21061-100-1) Rev B 14.12.21 @A1	REFA
5.08b	Drainage Strategy (21061-100-2) Rev B 14.12.21 @A1	
5.08c	Drainage Strategy (21061-100-3) Rev B 14.12.21 @A1	
5.09	Site Sections (21061-102-1) Rev A 30.09.22	Savills
5.10	Supplementary Planning Statement 12.22	Lancashire County Council
5.11	LLFA Response 06.01.23	Aegaea
5.12	FRA from Burnley Combined Residents Group 03.03.23	N/A
5.13	Email Correspondence discussing Peat	Natural England
5.14	Natural England Letter on Peat 10.02.23	
Section 6 – Document Submitted up to Full Council Meeting (March-June 2023)		
6.01	Letter to Full Council 15.05.23	Savills
Section 7 – Documents Submitted after Final Deferral		
7.01	Approximate Extent of Peat Plan (21061/08) 23.02.23	REFA
Section 8 – Documents Submitted for Temporary Access Road Application (FUL/2022/0522)		
8.01	Application Form 02.09.22	Savills
8.02	Temporary Access Plan (TA-001) 08.22 @ A1	Savills
8.03	Temporary Haul Road (THR-001) 08.22 @ A1	Savills
8.04	Temporary Access Plan (TA-001) Rev A 28.09.22 @ A1	Nicol Thomas Architects
8.05	Temporary Haul Road (THR-001) Rev A 28.09.22 @ A1	Nicol Thomas Architects
8.06	Location Plan (LP-001) 08.22 @ A3	Hydrock
8.07	Burnley Civic Trust Response 12.09.22	BWB Consulting
8.08	Councillor comments 09.22	GroundTech Consulting
8.09	Email from Applicant 15.09.22	SiteScan
8.10	Highways Response 30.09.22	Vectos
8.11	Application Form 02.09.22	Vectos
9.0 – Committee Reports & Minutes		
9.01	December 2022 Committee Report	Burnley Council
9.02	December 2022 Supplementary Report	
9.03	December 2022 Minutes	

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9.04	January 2023 Committee Report	
9.05	January 2023 Minutes	
9.06	March 2023 Committee Report	
9.07	SWECO Report	
9.08	March 2023 Supplementary Report	
9.09	March 2023 Minutes	
9.10	Supplement Decision of Head of Legal 16.03.23	
9.11	Report to Full Council 07.06.23	
9.12	Supplementary Report to Full Council 05.06.23	
9.13	Draft Section 106 Agreement 09.02.23	
Section 10 - Correspondence		
10.01	Extension of Time confirmation 23.11.22	Savills
10.02	Confirmation on Full Council Deferral	Burnley Council
10.03	Acknowledgement of Application FUL_2022_0149 06.05.22	Burnley Council
Section 11 – Policy Documents		
11.01	Burnley’s Local Plan 28.09.18	
11.02	BLP Extract Policy CC4 Development and Flood Risk	
11.03	BLP Extract Policy CC5 Surface Water and SUDS	
11.04	BLP Extract Policy HS1-2 Hollins Cross Farm	Burnley Council
11.05	Developer Contributions SPD 12.22	
11.06	Air Quality Management SPD 12.20	
11.07	CIHT Planning for Walking 04.15	Chartered Institution of Highways and Transportation
11.08	IHT Guidelines for Providing Journeys on Foot 2000	The Institution of Highways and Transportation
11.09	Burnley Councils Climate Change Strategy 2022-2026	Burnley Council
11.10	National Planning Policy Framework (2021)	MHCLG

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