

**BURNLEY BOROUGH COUNCIL**

**TOWN AND COUNTRY PLANNING ACT 1990**

Appeal by Prospect Homes Ltd against the failure of Burnley Borough Council to determine a planning application for “Full planning application for the erection of 200 dwellings and associated works.”

**Site: Hollin Cross Farm**

**Woodplumpton Road**

**Habergham Eaves**

**Burnley**

**Lancashire**

**BB11 3RS**

**Burnley Borough Council Ref:**

FUL/2022/0149

**Appeal Ref:**

APP/Z2315/W/23/3325783

1<sup>st</sup> September 2023

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## **1. Site Description**

1.1 The site 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 Farm to the south. 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 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 by two storey semi-detached residential buildings, with some detached dwellings and terraces.

1.2 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.

1.3 The application site lies on the edge of the built-up area of Rose Hill, within the ward of 'Coal Clough with Deer Play'.

1.4 The site slopes down at a consistent gradient with a total drop of 25m over the 420m from the south-western corner of the site to the north-eastern corner adjacent to the A646. The only area on the site where the existing site levels change significantly lies immediately west of Woodplumpton Road where the site drops down to meet road level.

1.5 An EIA Screening opinion was submitted in July 2021 which concluded that the proposed development of 200 homes on the site did not constitute EIA development.

## **2. Site History**

2.1 FUL/2022/0522 Formation of temporary access road off Woodplumpton Road to Hollins Cross Farms for duration of construction phase- ref FUL/2022/0149

This application is undetermined and was submitted in response to the early comments received from the Highways Authority. It is expected that this will be

withdrawn if the application is approved, as the access to the farms will be dealt with by the suggested conditions.

2.2 Pre application advice was sought prior to the submission of the application subject of this appeal.

### **3. Relevant Planning Policies**

#### **Burnley`s Local Plan (July 2018)**

SP1 – Achieving sustainable development

SP2 – Housing requirement 2012-2032

SP4 – Development strategy

SP5 – Development quality and sustainability

SP6 - Green infrastructure

HS1/2 –Housing Allocations (Hollins Cross Farm)

HS2 – Affordable housing provision

HS3 – Housing density and mix

HS4 – Housing developments

NE1 – Biodiversity and ecological networks

NE3 – Landscape character

NE4 – Trees, hedgerows and woodland

NE5 – Environmental protection

CC4 – Development and flood risk

CC5 – Surface water management and sustainable drainage systems

IC1 – Sustainable travel

IC2 – Managing transport and travel impacts

IC3 – Car parking standards

IC4 – Infrastructure and planning contributions

#### **Material Considerations**

Developer Contributions Supplementary Planning Document (SPD) (Adopted December 2020)

Air Quality Management: Protecting Health and Addressing Climate Change Supplementary Planning Document (SPD) (Adopted December 2020)

The National Planning Policy Framework (2021)

Chartered Institution of Highways & Transportation 'Planning for Walking'.

Institution of Highways and Transportation (IHT) document, "Guidelines for Providing for Journeys on Foot",

'Burnley Council's Climate Change Strategy' 2022-2026

#### **4. Proposed development**

4.1 The application has been submitted by 'Prospect Homes' who are a wholly owned subsidiary of 'The Riverside Group Limited'. 'Prospect Homes' profits are gift aided back to 'The Riverside Group' to fund a wide range of social purposes, including affordable homes, and care and community support services.

4.2 The proposal consists of a full application for 200no houses on an 8.65 ha allocated site for housing development (Burnley Local Plan Allocation HS1/2). The main site access incorporating both vehicular and pedestrian space is proposed off the A646 New Road via a new priority T-junction on the northern edge of the site, incorporating the formal right lane on New Road. Pedestrian and cyclist connectivity with access is proposed via the main access on New Road, with a pedestrian link also proposed from the site's eastern boundary to Woodplumpton Road.

4.3 The application proposes a gross density of 23 dwellings per hectare. The adopted approach to the layout is an avenue-type approach with linear areas of public open space situated to the north of the site and also bisecting the centre of the site to account for the required change in levels.

4.4 The site is broadly split into two halves, with the northern residential area at a lower level to relate to the existing dwellings on New Road / Glen View Road, with a large area of landscaped Public Open Space covering the change in gradient towards the southern part of the site which is at a higher level.

4.5 The properties would include two, three and four bedroomed homes, with these ranging from 693 sq ft to 1563 sq ft, the majority being detached. The houses would be built using artificial stone and concrete roof tiles.

4.6 In addition to the above, all properties will benefit from designated private amenity space in the form of gardens. Parking is integrated into the layout with properties benefitting from driveways with some integral and detached garages.

4.7 The proposal includes provision of 20no affordable dwellings on the site, which equates to 10% of the homes to be delivered. These would be provided as a mixture of 2 and 3 bedrooms semi-detached mews dwellings. The affordable homes would be built indistinguishable in standards from the market cost housing.

4.8 The proposed public open space would be provided as three large areas located as follows:

- At the east of the site adjacent to Woodplumpton Road, incorporating pedestrian links and play area;
- Across the centre of the site, again incorporating pedestrian permeability;
- Around the attenuation basin at the north of the site and at the site entrance adjacent to New Road including play area, and usable space for residents.

## **5. Background and reasons for the failure of the LPA to determine the application.**

5.1 The appeal is against the failure of Burnley Borough Council to determine the planning application, which was received on 22<sup>nd</sup> March 2022 and valid on 13<sup>th</sup> April 2022, within the prescribed timescales.

5.2 The application site is an allocated housing site (HS1/ 2) in Burnley's Local Plan and following negotiations the application was recommended for approval by

officers. Given the number of objections to the scheme, under the Council's constitution it was referred to Development Control (DC) Committee and has been to this committee on 3 occasions prior to being discussed and deferred by Full Council. The events leading up to the submission of the appeal are listed in chronological order below.

### **5.3 13<sup>th</sup> April 2022 – 7<sup>th</sup> December 2022.**

Case officer assessment of the application.

### **5.4 DC Committee meeting 8<sup>th</sup> December 2022.**

5.4.1 At this meeting the application was deferred to allow further consideration of the application. The minuted decision of this meeting is: *“That the application be deferred until the next meeting of the Committee in order to seek further information from the applicant relating to:*

*Local Plan Policy NE1 – Biodiversity. To clarify the net position following the late submission on behalf of some residents.*

*Flood risk/surface water drainage - specifically in relation to the SUDs across the development – capacity and flooding and how this will be mitigated. Also post construction management and maintenance of the SUDs, including safety measures.*

*Local Plan Policy HS4 Part 4 - The plans should also include accessible homes as well as adaptable homes of which there are a number included.*

*Local Plan Policy HS4 Part 7 - accessibility of the Public Open Space contribution, particularly related to a stepped footpath. Also the off-site POS contribution at Scott Park –could this be provided closer (Rosehill Road)*

*Local Plan Policy SP5 Parts 5a and 5b – Accessibility – Transport Plan - Clarity re. numbers and safety management. How will the works manage traffic and improve highway safety?”*

### **5.5 9<sup>th</sup> December 2022 - 17<sup>th</sup> January 2022**

5.5.1 In the interim period work was carried out by the applicant to provide clarity on the above issues and the application was referred to the next DC committee.

## **5.6 DC Committee meeting 18<sup>th</sup> January 2023**

5.6.1 A drainage report by AEGAEA commissioned by objectors was received by the Council via a planning agent (Kirkwell's) acting on behalf of residents {at 13.13pm on 18<sup>th</sup> January 2023} 5 hours before the committee meeting, which not all members of the committee had had sight of. As members and officers had not had adequate time to consider the information in the reports. This raised questions in the members debate which required further consideration. Therefore, members were not able to make a decision because of this late submission and the application was deferred.

5.6.2 The minuted decision of that meeting is *“That the item be deferred to allow time for all parties to be provided with a copy of the late submission and for the subsequent response from the Lead Local Flood Authority to be included in the report for consideration by the committee.”*

## **5.7 19<sup>th</sup> January – 8<sup>th</sup> March 2023.**

5.7.1 Following this deferral the Council commissioned their own independent drainage report from SWECO. This report concluded that groundwater and any associated potential flood risk is not expected to be a significant constraint to the development.

5.7.2 AEGAEA and the applicant's drainage consultant LDE also commented on the SWECO report. Whilst the AEGAEA reports recommended that the risk of groundwater flooding needs to be considered in greater detail and the SWECO reports stated it would be beneficial, officers remained satisfied that the conditions that would be attached to an approval sufficiently deal with drainage matters.

## **5.8 DC Committee meeting 9<sup>th</sup> March 2023.**

5.8.1 The application was referred to DC Committee for the third time and members did not consider the submitted information adequate to ensure compliance with the Local Plan. The minuted decision of this meeting was a resolution to refuse for the following reason:

*“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”*

5.8.2 The Council's constitution requires that decisions which are substantially contrary to the Local Plan cannot be made by this committee and as such the application must be referred to Full Council for a decision.

## **5.9 10<sup>th</sup> March – 6<sup>th</sup> June 2023**

5.9.1 In the interim period the applicant was asked to consider carrying out the additional testing in relation to groundwater over the winter months. In response the applicant offered an additional condition and explanation set out below:

*“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.*

5.9.2 In summary, there is an area of standing water to the North of the site. This water has been present at the times when testing has been carried out and none of the tests have shown high ground water elsewhere on the site. The rationale for the additional condition is that further groundwater testing would be impeded by the presence of this standing water. It is therefore considered preferable to form the drainage basin in the wetter winter months that can be monitored and if groundwater draws into the basin this will determine the presence of ground water which can be mitigated if necessary. This condition is intended to give additional comfort to members that any ground water issues encountered will be adequately dealt with.

5.9.3 A specialist independent engineering consultant would oversee the formation of the basin and prepare the verification report. This report would confirm that either: The basin has been formed as designed without interfering with ground water or, The basin has been altered to avoid any interference with groundwater whilst still retaining adequate capacity to deal with surface water.

5.9.10 The applicant considers that if the development is approved this condition would ensure that only 1/3 of the houses within the development, which do not rely

on the basin for drainage, can be constructed prior to the construction of the basin and completion of the verification report. They consider that satisfactory discharge of this condition will ensure there is no issue with groundwater.

## **5.10 Full Council meeting on 7<sup>th</sup> June 2023.**

5.10.1 The resolution of the Full Council was to defer the application back to DC Committee for the following reason.

*“To defer the matter to the DC Committee until the full report of an over winter survey on flooding has been received and considered by the relevant experts on 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 present are available.”*

5.10.2 The 4 reports presented to these meetings and the minutes of these meetings have already been supplied and most of the planning issues are not in dispute as set out in those reports. The 3 main issues of concern which form the reason for the Full Councils' decision to defer (or failure to determine) the application shall be dealt with in turn.

## **6. Current matters of dispute**

**6.1 {defer until} the full report of an over winter survey on flooding has been received and considered by the relevant experts on flooding.**

6.1.1 The drainage reports commissioned by the Council and the resident's group both state that over winter testing of groundwater would be beneficial to inform the detailed drainage design.

6.1.2 Given the contents of the reports the Council consider it necessary to request the additional information regarding groundwater before determining the application. Without this information it cannot be determined to be in accordance with Local Plan policies CC4 and CC5 and therefore a putative reason for refusal.

6.1.4 It is however a matter that can be dealt with by the submission of information and capable of being agreed. If satisfactory reports are submitted to clarify that the development will not increase the risk of flooding from groundwater and this

information is used to inform the detailed drainage design; together with the recommended conditions this would ensure compliance with policies CC4 and CC5 of the Local Plan

## **6.2 {defer until} a further report on the ecological and climate change effect of the removal of peat, is received.**

6.2.1 The drainage reports note that the removal of the peat, which stores groundwater, will assist with the drainage of the site once developed. There is no indication on soil maps that peat would be expected to be found but supplementary trial pits for the SUDs pond located some peat in two trial pits described as 'plastic black clayey pseudo fibrous peat' and in a third trial pit 'grey amorphous peat with occasional silt pocket' identified, 20 – 30cm down below the topsoil of up to a metre in depth.

6.2.2 Members were concerned about what impact the removal of this peat would have on ecology and climate change and requested further information on this to enable them to determine the application.

6.2.3 Natural England has recently stood at the Places for Everyone Plan public inquiry arguing that restorable peat should not be developed as active peat is a rare habitat (as well as storing carbon). The peat is buried below top-soil and high-quality peat is described as fibrous. However further clarification is required on the nature of this peat to enable the council to consider the impact of its loss.

6.2.4 The council has sought further advice from Natural England on this point. At the time of writing this statement they have provided general advice.

*Natural England typically advises that sufficient information should be provided to determine the impacts of development on peat. Suitable detailed information must be provided to enable an understanding of the integrity of the peat and suitability for restoration to further inform their advice.*

*Where deep peaty soils are shown to be present we consider that they are restorable and would expect information to be provided to show that deep peat is not present or the peat is not restorable in order to support any development.*

6.2.5 As such it is considered necessary that the developer should provide more explanation on what the soil samples found in the boreholes mean, considering the recent position that Natural England has taken. Due to the inability to confirm it is acceptable without that information, at present it comprises a putative reason for

refusal and is contrary to the Local Plan. However, this may be able to be overcome through the production of further information that was requested by members and the application deferred until received, so the non-determination appeal was premature.

6.2.6 The Council requires satisfactory clarification that the removal of this peat will not have an unacceptable impact on climate change as well as clarification of the ecological impact of the removal of this peat. It should also be demonstrated that any negative impacts can be adequately mitigated. This would ensure compliance with policies NE1 and NE5 of the Local Plan.

## **7. Matters to concede**

### **7.1 {defer until} 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 present is received.**

7.1.1 Members were concerned that the bird surveys were out of date given the length of time that had elapsed since the application was originally submitted as they were carried out in 2020. Technically an update is now due and therefore it was necessary to seek further clarification on this. Further advice has been sought from the Council's expert consultee, Greater Manchester Ecology Unit (GMEU). Their view is that the submitted survey is still valid until next year. GMEU accepted the findings of the original survey and that mitigation on and potentially off-site could be achieved.

7.2.2 Unless there is material evidence that bird diversity and or abundance has significantly increased since 2020, they would not regard it as reasonable to refuse the application on the need for an updated breeding bird survey.

7.2.3 GMEU unambiguously states that further bird surveys are not necessary, and that the existing survey is still valid. Further and alternatively, GMEU's response is clear that even if a further bird survey indicated an increased bird interest on the site, the appropriate response would be for increased post-development mitigation which could be dealt with by way of a condition.

7.2.4 Officers have recommended conditions set out in Appendix 1. (28-30 and 32) based on advice from GMEU which require further information and updated surveys to be carried out before site and tree clearance which will mitigate against any harm

to protected species. Therefore, it is considered that this issue has now been adequately addressed.

7.2.5 The Full Council resolution sought to clarify whether the site was classified as Lowland Fen which is a UK BAP Priority Habitat. With respect to the clarification on whether “Lowlands Fens” habitat is present. The Council have investigated this point and Lancashire County Council (LCC) maps show that a section to the east of the site is Classified as Lowland Fen Habitat. LCC have confirmed that this classification remains unaltered since the site allocation.

7.2.6 According to the Wildlife Trust Lowland Fen is often found in small fragments, isolated by intensively managed farmland, but there are also more extensive areas in wetlands that have escaped drainage. In this case given the size of the area in question it is considered reasonable to assume that it is a fragment isolated by farmland. As set out in Burnley’s Local Plan, the aim of the classification is to protect the extent of habitats and not necessarily protect the habitats in situ.

7.2.7 The loss of the site was not specifically addressed in the officer reports or by GMEU in their advice and so it was necessary for members to seek this clarification. The proposal includes reference to negotiation with Lancashire Wildlife Trust to provide a contribution to off-site habitat creation as part of the BNG contribution. In accordance with policy NE1(7) compensatory habitat creation off-site is acceptable as a means of last resort in the avoid, mitigate and compensate hierarchy. The application was also supported by ecology reports which noted that following a walkover of the site no key species for the ‘Purple moor-grass and rush pasture’ habitat was found. Furthermore, the attenuation pond will provide a permanent Wetland Habitat. The Council’s consultee GMEU were satisfied with the submitted ecology report, and it was noted that the loss of farmland can be adequately mitigated with on and off-site mitigation. It was also noted that some priority species would benefit. It is considered that the members request for the clarification of the habitat type is adequately addressed.

## **8. Conclusion**

8.1 The site is an allocated housing site in Burnley’s Local Plan and the majority of material planning considerations are not in dispute. A suite of conditions is recommended and if approved would be subject to a S106 agreement to secure the developer contributions.

8.2 The Council accept that there have been delays in determining this application. Due to points of clarification being required on certain technical matters the decision makers did not have enough information to determine the application.

8.3 The current matters in dispute are requests for additional information on specific technical issues as set out above which could potentially have been submitted and agreed prior to determination and therefore the Council consider the appeal to be premature. The resolution of the Full Council meeting was that members deferred the application until further information was received to inform their decision and ensure compliance with the Local Plan.

8.4 As such the inspector is respectfully requested to dismiss the appeal and refuse the application due to inadequate information on flood risk and the impact of peat removal on climate change and ecology.

Laura Golledge MRTPI

1<sup>st</sup> September 2023