

HOLLINS CROSS FARM, WOODPLUMPTON ROAD, BURNLEY
APPEAL BY PROSPECT HOMES

BURNLEY COUNCIL'S UPDATED POSITION STATEMENT

Introduction

1. The Appellant seeks full planning permission for the erection of 200 no. dwellings and associated works.
2. The site sits within an allocation governed by Policy HS1/2 – Hollins Cross Farm of the Burnley Local Plan (CD 11.01). The principle of housing on the Site has therefore always been a matter of agreement between the parties, however, the detail has not, such that both the Council's Development Control Committee, and subsequently the Full Council, deferred the application in order to seek further information. A number of the initial reasons for deferral were sufficiently addressed by the Appellant. Accordingly, it is the Full Council's deferral on 7th June 2023 which forms the basis for the Appellant's non-determination appeal.
3. The ability of the proposed development to deliver an acceptable drainage scheme was the Council's primary concern. In particular, the Council considered that further investigations of groundwater levels on the site were required, as it had not been adequately assessed and taken into account as part of the submitted SuDs design.
4. In addition, the Council's view was that the application had failed to appropriately assess the ecological and climate change effect of the removal of peat, which had been identified on the site through the Geo Investigation Report and Supplementary Site Investigations Letter.

5. Finally, given the bird surveys were carried out in 2020, the Council considered that further advice on the validity of the ecological surveys, given their age, was required from the Council's expert consultee, Greater Manchester Ecology Unit (GMEU). Advice was subsequently sought and the validity of the existing survey was confirmed, with Condition 27 now securing updated surveys to be carried out before development is commenced. Members also sought clarification on whether 'lowland fens' habitat was present, a matter which had not been referenced in GMEU's consultation response. Clarification was sought and confirmed that it was not present on the site. Accordingly, the Council withdrew this putative reason for refusal.

Flood risk and drainage

6. In relation to flood risk and drainage, Members' concern was based on the consistent reference in technical reports to the existence of groundwater on the site. Indeed, the Geo Investigation Report produced by REFA, who were originally instructed by the Appellant, concludes that "significant amounts of groundwater" was present on the site (CD 2.25a at §5.6).
7. The Full Council's decision to defer on this matter was also premised on the reports prepared by, and the professional opinion of, Mr Cook of Aegaea who had been instructed by local residents. On the basis that his evidence represented Members' position, he was formally instructed by the Council following the submission of the non-determination appeal. His professional opinion was that the submitted reports did not provide enough information or confidence to address the potential groundwater flood risk at the site for the existing baseline and future development. Mr Cook's concern was that if the proposed development did not provide appropriate mitigation in respect of potential groundwater flood risk, the proposed attenuation basin part of the surface water drainage layout could increase flood risk elsewhere through displacement of groundwater and disrupt groundwater flows. In addition, the potential residual groundwater risk because of the development, specifically the basin, could impact extant septic tanks, residential properties on the northern boundary and even the proposed SuDs through buoyancy if not designed correctly. The Council's position was therefore that there was conflict with Policies CC4 and CC5 of the Local Plan.

8. On the basis that further information had been requested, subsequent discussions took place between Mr Cook and Mr Nicholas, the Appellant's drainage consultant, in relation to whether groundwater mitigation features could be incorporated into the final drainage scheme, irrespective of the results of over winter groundwater monitoring. The Appellant subsequently instructed REFA, at Mr Cook's request, to produce a groundwater mitigation plan. On the basis of amendments made following Mr Cook's comments, his professional opinion is that mitigation features can be provided as part of the drainage scheme. The extent to which they are required will be dependent on the monitoring results, however, even on a worst case scenario Mr Cook's opinion as agreed with Mr Nicholas is, following the production of that plan, any groundwater can be appropriately mitigated as part of the drainage scheme. The plan, which forms the substantive basis for addressing the Council's putative reason for refusal, has only been produced recently and was not before Members when the application was deferred. The Appellant and Council have accordingly agreed a suitably worded condition (Condition 26) to secure appropriate mitigation features and the mitigation plan, which must be incorporated into the final drainage scheme to be approved by the Council (secured by Condition 23). The proposed wording includes the monitoring of groundwater levels over 3 months during the winter period (October to March) where SuDs features are proposed and extant drainage is present. The baseline groundwater conditions, and its impact on hydraulic capacity and structural integrity, is to be incorporated into the design in relation to both existing and proposed assets. The locations and mitigation design principles are secured by the groundwater mitigation plan which is expressly referenced in the condition.

9. The Council is of the view that subject to the imposition of this condition requiring over winter groundwater monitoring, which secures the principles in the groundwater mitigation plan to inform the final drainage scheme, the development would be in compliance with the development plan in this regard. The condition is therefore necessary to make the development acceptable, is reasonable and proportionate.

Peat

10. Members' decision to defer, on the basis that further information was required around the ecological and climate change effect of the removal of peat, was premised on the Geo Environmental Investigation Report (CD 5.03) and Supplementary Site Investigations Letter (CD5.04) submitted as part of the application which identified the presence of peat on the site.¹

11. The importance of peatlands in relation to climate change has been made clear at a national level, where Defra's England Peat Action Plan (CD 11.15) now forms the basis for Natural England's consultation response, that they do not support the principle of developing on peat and that peat should be a material consideration in light of the Local Nature Recovery Strategy ambitions around Net Zero and the Climate Emergency declared by the Council. This is also reflected locally through Local Plan Policy SP1, which requires decision taking to support the mitigation and adaption to climate change; Burnley's Green Infrastructure Strategy (CD 11.14) which recognises the storage of carbon in soil as beneficial in contributing towards climate change mitigation; and Policies NE1 and NE5 which govern biodiversity and environmental protection. Accordingly, given peat was identified on the site, Members considered that further information was required in order to adequately assess its ecological and climate change impacts.

12. Following the Full Council's decision to defer, GMEU and Natural England's advice was sought on the matter and it was advised that further information should be sought (Planning Position Statement, Appendices B and C (CD 15.02)). In response, the Appellant provided a letter from Biora addressing the ecological implications (CD 12.03) and letter from Coopers addressing the climate change implications (CD 12.04). GMEU and Natural England were subsequently consulted. Natural England's position is to promote the preservation of peat in-situ, such that they consider the removal of peat is not justified without exploring the feasibility of alternative SuDs designs that all it to be retained in the ground. Mr Cook's opinion is that, given the topography of the site, a SuDs basin elsewhere would not be feasible. Accordingly, the Council have assessed the limited climate change impacts (given it is inactive peat and is not restorable), and lack of adverse effects on the ecological value of the site (as confirmed by GMEU). The Council accept

¹ Drawing No 21061/08 (CD 7.01) shows the approximate extent of peat on the site.

its removal, on the basis that the climate change impact is appropriately mitigated through its appropriate disposal (in short, it remaining wet and not drying up where it releases carbon into the atmosphere). On the first day of the inquiry, the Appellant agreed that it was necessary to secure the same through the imposition of Condition 20. Accordingly, it is now agreed that the condition is necessary to make the development acceptable, reasonable and proportionate, which appropriately addresses the Council's putative reason for refusal.

Conclusions

13. The Council's concerns, resulting in the putative reasons for refusal, have been withdrawn on the basis that the Appellant has now provided further evidence and assurances. These were not presented, nor available for consideration, at the date of the Full Council meeting. Such assurances are only secured through the precise wording of the conditions, the detail of which has been arrived at following thorough debate and negotiations between the Appellant and Council.
14. As a result, the Council invites the Inspector to allow the appeal and grant permission in favour of a scheme which is now in line with Local Plan policies.

26th October 2023