

BURSCOUGH PARISH NEIGHBOURHOOD PLAN

ADVICE

1. I am instructed to advise Burscough Town Council (the “Town Council”) in respect of issues raised in a pre-application enquiry about a proposal for residential development of a site known as Red Cat Lane in Burscough. The area lies within the Town Council’s area which in turns falls within the district council area of West Lancashire Borough Council (“WLBC”), the local planning authority for the area.
2. I am instructed that within the Town Council’s area the development plan for present purposes comprises the West Lancashire Local Plan (“WLLP”) and the Burscough Parish Neighbourhood Plan (“BPNP”)¹. The BPNP is a neighbourhood development plan and I am instructed that it was made in July 2019. The WLLP was adopted in October 2013.
3. The site at Red Cat Lane is identified in the WLLP as Safeguarded Land under policy GN2. The relevant parts of the policy provide –

“The land identified on the Policies Map as safeguarded land is within the settlement boundaries but will be protected from development and planning permission will be refused for development proposals which would prejudice the development of the land in the future. This safeguarding is necessary for... the following... reasons...”

It is allocated for the “Plan B” – such land will be safeguarded from development for the needs of the “Plan B” should it be required. If the “Plan B” is not required then this land will be safeguarded from development until 2027 for development needs beyond 2027...

The following sites will be safeguarded from development (potential capacity for housing and/or employment land in brackets):

a) “Plan B” sites...

iii. Land at Red Cat Lane, Burscough (60 dwellings)...”

¹ I understand that there are further development plan documents covering minerals and waste but that they are not relevant to the matters under consideration.

Policy RS6 makes further provision with respect to “Plan B” sites. Essentially the policy provides that the “Plan B” safeguarded sites will only be considered for release for housing development if one of three identified trigger events occurs.

4. As Red Cat Lane is within the settlement boundary further policies are of note. Policy RS1 provides that

“subject to other relevant policies being satisfied, residential development will be permitted within the Borough’s settlements as set out below”.

The policy provides that within Key Service Centres such as Burscough²

“residential development will be permitted on brownfield sites, and on greenfield sites not protected by other policies, subject to the proposals conforming with all other relevant policy”.

Policy GN1 also provides for development within settlement boundaries but makes this subject to other relevant Local Plan policies being satisfied. In addition Policy GN3 sets out various other criteria against which development proposals will be assessed *“in addition to meeting other policy requirements within the Local Plan”.*

5. Policy BPH1 of the BPNP addresses new residential development. The relevant part of Policy BPH1 provides

“New residential development within the existing settlement boundary of Burscough will be supported providing it meets, where relevant, the following criteria:

1. *It has good access or the potential to improve access by alternative modes of travel to local services and facilities;*
2. *It includes housing of a mix, tenure and size that meets identified needs in line with policy BPH 2: Housing Mix;*
3. *It is appropriate in scale and design to its local context and adjacent properties;*
4. *It provides or contributes towards the provision of infrastructure made necessary by the development or where it gives rise for a need*

² See policy SP1

for additional or improved infrastructure in line with policy BP11: Development and Infrastructure; and

5. *It provides adequate vehicular and non-vehicular access arrangements."*

The reasoned justification to the policy specifically refers to Red Cat Lane; identifying it as safeguarded land within the WLLP and stating that it *"will only come forward if allocated sites fail to deliver the required amount of development"*³. The reasoned justification further explains that the scale and location of housing growth within the Parish has been established through the WLLP and that *"it is considered unnecessary for the BPNP to make additional allocations for housing development. Instead, the BPNP seeks to influence the type and design of housing to ensure that it provides for local housing need as well as for the wider housing market area and delivers high quality and inclusive places for people to live."*⁴ The reasoned justification further states that Government Policy seeks to increase housing provision and that the requirement figures are minimum figures so the BPNP *"seeks to allow additional sustainable residential development within the existing settlement limits of Burscough providing it meets certain criteria aimed at ensuring that new housing is sustainable including the provision of infrastructure to meet the needs of that development...the Plan B site at Red Cat Lane [is] now part of the settlement"*.⁵

6. The WLLP identifies the site at Red Cat Lane as safeguarded land, and provides that it can only be considered for development prior to 2027 if one of the trigger events identified in policy RS6 occurs. I am instructed that it is argued that BPNP policy BPH1 conflicts with the WLLP and allows for immediate development of the site subject to meeting the criteria set out in policy BPH1. I have not been provided with the precise details, but I have assumed that essentially the argument being made is that policy BPH1 provides support for new residential development within the settlement without reference to any other policies so that if the criteria in the policy are satisfied there is no restriction upon development for residential purposes within the settlement.
7. I am instructed to advise on various issues arising from this contention.

³ See BPNP para 6.2.3

⁴ Paragraph 6.2.4

⁵ Paragraph 6.2.5

In the event of conflict between policies in the BPNP and the WLLP which policies take precedence?

8. This question is addressed by *section 38(5) Planning and Compulsory Purchase Act 2004* ("*PCPA 2004*") which provides that in the event of a conflict between policies in the development plan the conflict is to be resolved in favour of the policy in the last document to become part of the development plan. In this particular case the BPNP became part of the development plan after the WLLP and accordingly if there were a conflict between a policy in the BPNP and a policy in the WLLP the policy in the BPNP would prevail.

Is BPNP policy BPH1 in conflict with WLLP policies GN2 and RS6?

9. If policy BPH1 is read on its own without any consideration of its reasoned justification or the remainder of the development plan the point can be made that it provides support for residential development of land within the settlement boundary if the relevant criteria set out in the policy are satisfied. The policy does not expressly cross-refer to any other policies in the development plan (in contrast with a number of policies in the WLLP such as policies RS1, GN1 and GN3). Read literally and in isolation this could support an argument that under policy BPH1 the only limitation placed upon residential development of Red Cat Lane is the need to meet the criteria in that policy which do not include the restrictions imposed upon the site as safeguarded land under WLLP policies GN2 and RS6. On this argument the additional restrictions imposed by policies GN2 and RS6 might be said to conflict with policy BPH1. Whilst an argument can be made to interpret the policy in this way I do not consider this to be a correct or proper interpretation of the policy.
10. In considering whether BPH1 is properly to be interpreted as in conflict with WLLP policies GN2 and RS6 it is important to remember a number of general principles applying to interpretation of policy –

- i) Although the interpretation of development plan policy is ultimately a matter of law, the courts do not approach that task with the same linguistic rigour applied to the construction of a statute or contract. It is necessary to discern from the language used in formulating the plan the sensible meaning of the policies in question in their full context and thus their true effect. The context includes the objectives to which the policies are directed, other relevant policies in the plan, and the relevant

supporting text. The court will always keep in mind that the creation of development plan policy by a local planning authority is not an end in itself, but a means to the end of coherent and reasonably predictable decision-making in the public interest⁶.

- ii) Statements of policy should not be construed as if they were statutory or contractual provisions. Development plan policies are framed in language whose application to a given set of facts requires the exercise of judgment⁷.
- iii) A strained interpretation of the development plan should not be adopted in order to produce complete harmony between its constituent parts but one should also be wary of suggested objective interpretation of one part of the plan as having precedence over another. It is not unusual for parts of the plan to pull in different directions and it is for the local planning authority to decide which policies should be given greater weight in the particular decision⁸.

11. Development plans usually contain a mix of general and site specific policies. The general policies will usually apply throughout the plan area including to sites which are the subject of site-specific policies. In determining a planning application on a site which is subject to site-specific policies it remains necessary to consider all relevant policies, but it is normal to consider the site-specific policies first as they will have been drafted to provide particularly for the site in question and the interpretation and application of these policies will often impact upon the application of more general policies to the site in question.

12. WLLP policies GN2 and RS6 are site specific policies which apply to a limited number of identified sites. The policies identify the relevant sites as safeguarded land to be safeguarded for development beyond 2027 unless particular specified circumstances apply. The relevant provisions in GN2 and RS6 place clear restrictions upon the development of this site. In contrast BPNP policy BPH1 is a general policy which applies to all land within the settlement boundary. Although this policy provides general support for residential development within the settlement boundary if particular criteria are

⁶ See *Canterbury City Council v SCLG* [2019] EWCA Civ 669 [2019] PTSR 1714 @ para 22

⁷ See for example *Tesco Stores Ltd v Dundee CC* [2012] UKSC 13 [2012] PTSR 983 @ para 19

⁸ See for example *R(TW Logistics Ltd v Tendring DC* [2013] EWCA Civ 9 [2013] 2 P&CR 9 @ para 18

satisfied it does not make any site specific allocations and it does not alter any designation of land within the settlement boundary. The policy does not refer to any other policies. In particular the policy does not make any reference to any other restrictions which may be placed upon the development of land within the settlement boundary. There is no suggestion in the policy that the criteria in policy BPH1 are to replace any restrictions or criteria in other policies within the development plan.

13. The natural and correct interpretation of policy BPH1 looking simply at the words of the policy is that it provides support for residential development within the settlement boundary if the criteria in the policy are met, but that it does not alter the application of any other relevant policies which apply to the site under consideration; development within the settlement boundary remains subject to other relevant policies in the development plan and in particular any relevant site-specific policies. There is nothing in policy BPH1 to suggest that it removes or replaces any other development plan policy. This would mean that there is no conflict with WLLP policies GN2 and RS6 which retain their full weight.
14. The reasoned justification further supports this interpretation of policy BPH1. The reasoned justification explains that additional allocations for residential development are unnecessary and therefore *"the BPNP seeks to influence the type and design of housing"* rather than make any alteration to the overall provision of housing made in the WLLP. The reasoned justification specifically refers to the Red Cat Lane site and its status as safeguarded land and it is clear from the reasoned justification that no change to this status was intended or envisaged as a result of the BPNP. For the reasons set out above it is not necessary to rely upon the reasoned justification to come to the conclusion that policy BPH1 does not conflict with policies GN2 and RS6. However, the supporting text is part of the context which must be considered in interpreting the policy and the supporting text clearly confirms that the policy is not to be interpreted as in conflict with policies GN2 and RS6.
15. There are wider considerations which further support and confirm the conclusion that policy BPH1 is not to be interpreted as conflicting with or overriding other site-specific development plan policies. Policy BPH1 applies to all land within the settlement boundary. In addition to the safeguarded land subject to policies GN2 and RS6 other land within the settlement boundary is subject to other site specific policies. This includes land which is protected as Green Infrastructure (WLLP policy EN3), nature conservation sites (WLLP policy EN2.1) and employment sites (WLLP policy EC1.2(b) and paragraph 6.15). If

policy BPH1 were to be interpreted as conflicting with policies GN2 and RS6 so as to override these policies there is no reason why it would not similarly conflict with and override the other policies such as EN3, EN2.1 and EC1.2(b). This erroneous interpretation would suggest that all land within the settlement boundary could be developed for residential purposes irrespective of protections against such development in other development plan policies. This would be a highly unusual approach which would conflict with the clear provisions of the WLLP and national policy. If such a policy approach were to be taken one would expect it to be clearly expressed and for there to be a clear reason for such an approach. Policy BPH1 is not drafted in terms which could properly be interpreted as providing for such an approach and the surrounding context including the reasoned justification make it clear that such an approach is not provided for by the policy.

16. This point is further emphasised when other policies within the BPNP are considered. The BPNP contains policies which apply protection to specific sites within the settlement which are identified on the proposals map: such as BPEV1 Green Space, BPR1 Burscough Centre and BPE1 Burscough Industrial Estate. If policy BPH1 were to be interpreted in the manner proposed it would be in conflict with these policies. Given the presence of these site-specific policies within the BPNP it is clear that any support for residential development provided by policy BPH1 is subject to any particular proposal also meeting the other policies in the BPNP. When the policy is interpreted in this manner (which also accords with the natural meaning of the policy discussed above) there is no conflict with those policies. The natural interpretation of the BPNP when read as a whole is that if a proposal for residential development is on a site which is subject to site-specific policies it is necessary to comply with those policies in addition to policy BPH1. Given that the support provided for residential development by policy BPH1 is subject to compliance with site-specific policies in the BPNP there is no rational basis for arguing that it is not similarly subject to site-specific policies elsewhere within the development plan.
17. Policy BPH1 does not expressly state that it is subject to other policies in the development plan (in contrast with some of the policies in the WLLP). However, there is no need for a policy to state that it is subject to other development plan policies. The normal position is that any development plan policy is subject to other relevant policies and that the development plan is to be read in the round as a whole⁹. A policy should only be interpreted

⁹ See for example *Canterbury City Council @ paras 21 & 22* and *Stratford upon Avon DC v SSCLG [2013] EWHC 2074 (Admin) [2014] JPL 104 @ para 5*

as contradicting or overriding other policies if that is clear from the wording of the policy. For the reasons already considered that cannot be said to be the position with policy BPH1.

18. The clear and sensible meaning of policy BPH1 in its full context is that it provides criteria to influence the type and design of housing, but the policy does not remove the need to consider other relevant development plan policy which may apply to any particular site or proposal. For the reasons set out policy BPH1 is not in conflict with policies GN2 and RS6 which continue to apply with full weight to the site at Red Cat Lane.
19. I am asked some subsidiary questions which have to an extent been answered in addressing the main issue above.

Is policy BPH1 a similar policy to WLLP policy GN3 dealing with local development principles which does not conflict with the strategic policies dealing with housing growth and phasing?

20. Policy BPH1 is a similar policy to policy GN3. The reasoned justification confirms that the policy is concerned with influencing the type and design of housing rather than making provision for additional housing. Whilst policy GN3 expressly states that it is subject to meeting other policy requirements this distinction is of no consequence as this merely reflects the normal position in interpreting development plan policies.

Does the reasoned justification carry any weight in support of the conclusion that the policy deals with development principles rather than housing provision and phasing?

21. The reasoned justification cannot override or change the meaning of a development plan policy. In the event that there is a conflict between a policy in a neighbourhood development plan and any other information in the plan, the conflict must be resolved in favour of the policy¹⁰. The reasoned justification is, however, part of the context which must be taken into account in interpreting policy. For the reasons set out above the reasoned justification does provide support for the conclusion that the policy in this case is concerned with development principles rather than housing provision and phasing.

¹⁰ Section 38B(3) PCPA 2004



Briefing Note

Subject Burscough Parish Neighbourhood Plan

Date 2 December 2021

Background

West Lancashire Borough Council, as Local Planning Authority, has received an enquiry for residential development at Red Cat Lane, Burscough. This can be expected to be followed by the submission of a planning application.

The enquiry needs to be considered in relation to the development plan for the area, which comprises the adopted West Lancashire Local Plan 2012-2027 (WLLP), the Burscough Parish Neighbourhood Plan (BPNP), which covers the parish of Burscough only, and the Joint Lancashire Minerals and Waste Local Plan. The Borough Council produced the WLLP, with Burscough Parish (now Town) Council being responsible for drafting the BPNP. The Minerals and Waste LP is not important in this instance.

The enquiry site is designated as safeguarded land ("Plan B") in the WLLP which is replicated on the BPNP Key Diagram. Broadly speaking, this means that it is safeguarded from development until 2027 or beyond and it could be expected to provide circa 60 dwellings in total. There is another, much larger, safeguarded site in Burscough at Yew Tree Farm which would provide for 500 new dwellings and 10ha of employment land and for which there is ongoing developer interest. This is the southern part of the larger Yew Tree Farm strategic site (WLLP Policy SP3), part of which has been and is currently being developed.

In providing information in connection with the Red Cat Lane enquiry, the enquirer stated that policies in the BPNP ("made" on 26 July 2019) supersede those in the adopted WLLP (adopted October 2013) where they are in conflict as the BPNP is the more up to date document. This appears contrary to advice contained in the National Planning Policy Framework (NPPF), which is more nuanced around the weight to be attached to "strategic" and "non-strategic" Local Plan policies, so WLBC officers sought a legal opinion in relation to a contradiction between the NPPF and section 38(5) of the Planning and Compulsory Purchase Act 2004 (which the enquirer had quoted).

Counsel's opinion indicates that section 38(5) takes precedence over the NPPF (essentially, law trumps advice / guidance) and so the enquirer is correct. This has major implications for the two Local Plan safeguarded sites in Burscough and means that a residential planning application on either site would be acceptable in principle now and would not have to wait until or post 2027 to be so. There are other BPNP policies that would be relevant (particularly those in the infrastructure section of the Plan) but these appear to present challenges to overcome rather than affecting the in principle acceptability.

This situation would cause major concerns for local residents. Additionally, the Parish / Town Council will be concerned this situation has arisen as there is an unintentional conflict between the relevant neighbourhood plan and local plan policies.

Detail

The relevant policies in conflict are:

- BPNP Policy BPH1: New Residential Development
- WLLP Policies GN2: Safeguarded Land and RS6: A "Plan B" for Housing Delivery in the Local Plan.
- In consideration of Yew Tree Farm, additionally WLLP strategic Policy SP3.

The wording of BPNP Policy BPH1 reduces the weight to be attributed to WLLP Policies SP3, GN2 and RS6 in decision taking as it states that new residential development within the existing settlement boundary of Burscough will be supported in principle (now). Both the Red Cat Lane and Yew Tree Farm sites are within the WLLP settlement boundary for Burscough.

Whilst (as then) Burscough Parish Council and Cass Associates drafted the BPNP, WLBC officers provided comments upon the document; some of which were taken on board and some of which were not. The Examination of the BPNP by an independent Examiner was "light touch" and at no point was the conflict between BPNP Policy BPH1 and WLLP Policies SP3, GN2 and RS6 picked up by the Parish Council / Cass, WLLP officers, the Examiner or during public consultation.

Suggested Way Forward

There are two aspects to this, whom to inform (and when) and seeking to address the situation.

Whom to inform / brief and when?

It is suggested that the following order of people be contacted and briefed:

1. WLBC Leader / Planning Portfolio holder
2. Burscough Town Council (Chairman / Clerk) and Burscough ward councillors.

Discussions would need to be confidential and remain so for the time being.

At some time after the above, it would be appropriate to inform the enquirer that we have received legal advice on the matter. At an unknown time beyond that one could expect the situation to enter the public domain (through an applicant's supporting planning statement, Development Management case officer report etc). It is understood that the enquirer has also taken legal advice on the matter.

Addressing the situation

The BPNP is a Parish / Town Council produced document and the decision of how to respond to the situation rests with them. It is of note that a neighbourhood plan can be modified, which in this instance could entail the removal of Policy BPH1 from the Plan or its amendment. Whilst a neighbourhood plan can be modified / "made" far quicker than a local plan can be adopted, the process involved, with indicative timescales,

entails the following stages for modifying Policy BPH1. These would require confirmation / legal advice.

Stage	Comment	Estimated Timescale
1. Defining the Neighbourhood Area	Not relevant in this instance, as the area is already defined	n/a
2. Preparing the Neighbourhood Plan	Potential requirement for Strategic Environmental Assessment and Habitats Regulations Assessment Screening. Would require legal advice to confirm this is needed. Likely to be done in house by the Local Planning Authority for the Town Council (speed).	Uncertain as if needed would require a response from Natural England as statutory consultee. Estimate 6 weeks
3. Pre-submission publicity and consultation	Town Council need to publicise the Neighbourhood Plan modification in a manner that is likely to bring it to the attention of people who live, work or undertake business in the neighbourhood area.	6 weeks public consultation plus 4 weeks for Town Council consider of responses and preparing next stage.
4. Plan submitted to the local planning authority	Plan submitted by Town Council to the Local Planning Authority to administer remainder of the process.	2 weeks LPA preparation plus 6 weeks public consultation
5. Independent Examination	Borough Council need to appoint independent examiner to consider the Plan modification and all comments upon it.	6 weeks
5a. Record of Decision	Borough Council considers whether to accept examiner's recommendations.	Up to 2 weeks
6. Referendum	Borough Council to organise. Voting concluded over 1 day. Legal advice required to confirm this stage is needed (likely).	7 weeks from previous stage
7. "Making" the Neighbourhood Plan	<u>Plan is effectively "made" in any event if successful outcome at Referendum (50% plus vote in favour).</u>	(2 weeks from previous stage)
Estimated Total		39 / 41 weeks

The above timescale is an estimate. If the Town Council decided to initiate modifying the neighbourhood plan, the exact procedure would need to be confirmed, including whether a Referendum (the responsibility of WLBC) would be required, which appears likely. It may be advisable to seek legal advice in connection with this and other matters (e.g. the potential for Judicial Review of a modified neighbourhood plan etc). There

would also be a need to re-confirm that the Borough Council has a suitable scheme of officer delegation of decision making in place as a requirement for any Cabinet approvals would lengthen the above estimated timescale. Purdah may also be a consideration.

The reason to modify the BPNP would be in relation dealing with a future planning application at the Yew Tree Farm safeguarded site as one could anticipate that modification may be too late for dealing with a planning application at Red Cat Lane where the enquirer has a head start by already identifying the issue. Nevertheless, timing (YTF and Red Cat Lane planning applications v modification) would need to be explored further to ensure that modification of the BPNP would be worthwhile.

There would be two alternative options to modifying the BPNP which are:

1. Do nothing.

The likelihood would be that a planning application would come forward on the safeguarded Yew Tree Farm site during 2022 (there have been enough previous enquiries and an unsuccessful 2018 appeal to support this view). The issue is then what would be the material consequences of bringing forward development? e.g. a 500 dwelling scheme would need to have a phased development and release to the market, whether the safeguarded site would become an allocation in WLLP 2023-2040. At this point in time, it would not be appropriate to speculate which sites may become new LP allocations. There is also a political dimension to the option of do nothing.

2. Revoking the BPNP

This would revoke the Plan in entirety and would be the most severe response. It would require legal advice (prospect of Judicial Review etc) and full co-operation of the Town Council. The Secretary of State may revoke a neighbourhood plan or a Local Planning Authority may revoke it with permission of the SoS and reasons must accompany the revocation.

Footnote

Exact quote from Section 38(5) of the Planning and Compulsory Purchase Act 2004:

"If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan."



Briefing Note

received at meeting

Subject Burscough Parish Neighbourhood Plan

Date 30 November 2021

Background

West Lancashire Borough Council, as Local Planning Authority, has received an enquiry for residential development at Red Cat Lane, Burscough. This can be expected to be followed by the submission of a planning application.

The enquiry needs to be considered in relation to the development plan for the area, which comprises the adopted West Lancashire Local Plan 2012-2027 (WLLP), the Burscough Parish Neighbourhood Plan (BPNP), which covers the parish of Burscough only, and the Joint Lancashire Minerals and Waste Local Plan. The Borough Council produced the WLLP, with Burscough Parish (now Town) Council being responsible for drafting the BPNP. The Minerals and Waste LP is not important in this instance.

The enquiry site is designated as safeguarded land ("Plan B") in the WLLP which is replicated on the BPNP Key Diagram. Broadly speaking, this means that it is safeguarded from development until 2027 or beyond and it could be expected to provide circa 60 dwellings in total. There is another, much larger, safeguarded site in Burscough at Yew Tree Farm which would provide for 500 new dwellings and 10ha of employment land and for which there is ongoing developer interest. This is the southern part of the larger Yew Tree Farm strategic site (WLLP Policy SP3), part of which has been and is currently being developed.

In providing information in connection with the Red Cat Lane enquiry, the enquirer stated that policies in the BPNP ("made" on 26 July 2019) supersede those in the adopted WLLP (adopted October 2013) where they are in conflict as the BPNP is the more up to date document. This appears contrary to advice contained in the National Planning Policy Framework (NPPF), which is more nuanced around the weight to be attached to "strategic" and "non-strategic" Local Plan policies, so WLBC officers sought a legal opinion in relation to a contradiction between the NPPF and section 38(5) of the Planning and Compulsory Purchase Act 2004 (which the enquirer had quoted).

Counsel's opinion indicates that section 38(5) takes precedence over the NPPF (essentially, law trumps advice / guidance) and so the enquirer is correct. This has major implications for the two Local Plan safeguarded sites in Burscough and means that a residential planning application on either site would be acceptable in principle now and would not have to wait until or post 2027 to be so. There are other BPNP policies that would be relevant (particularly those in the infrastructure section of the Plan) but these appear to present challenges to overcome rather than affecting the in principle acceptability.

This situation would cause major concerns for local residents. Additionally, the Parish / Town Council will be concerned this situation has arisen as they have unintentionally created a conflict between the relevant neighbourhood plan and local plan policies.

Detail

The relevant policies in conflict are:

- BPNP Policy BPH1: New Residential Development
- WLLP Policies GN2: Safeguarded Land and RS6: A "Plan B" for Housing Delivery in the Local Plan.
- In consideration of Yew Tree Farm, additionally WLLP strategic Policy SP3.

The unintentional loose wording of BPNP Policy BPH1 reduces the weight to be attributed to WLLP Policies SP3, GN2 and RS6 in decision taking as it states that new residential development within the existing settlement boundary of Burscough will be supported in principle (now). Both the Red Cat Lane and Yew Tree Farm sites are within the WLLP settlement boundary for Burscough.

Whilst (as then) Burscough Parish Council and Cass Associates drafted the BPNP, WLBC officers provided comments upon the document; some of which were taken on board and some of which were not. The Examination of the BPNP by an independent Examiner was "light touch" and at no point was the conflict between BPNP Policy BPH1 and WLLP Policies SP3, GN2 and RS6 picked up by the Parish Council / Cass, WLLP officers, the Examiner or during public consultation.

Suggested Way Forward

There are two aspects to this, whom to inform (and when) and seeking to address the situation.

Whom to inform / brief and when?

It is suggested that the following order of people be contacted and briefed:

1. WLBC Leader / Planning Portfolio holder
2. Burscough Town Council (Chairman / Clerk) and Burscough ward councillors.

Discussions would need to be confidential and remain so for the time being.

At some time after the above, it would be appropriate to inform the enquirer that we have received legal advice on the matter. At an unknown time beyond that one could expect the situation to enter the public domain (through an applicant's supporting planning statement, Development Management case officer report etc). It is understood that the enquirer has also taken legal advice on the matter.

Addressing the situation

The BPNP is a Parish / Town Council produced document and the decision of how to respond to the situation rests with them. It is of note that a neighbourhood plan can be modified, which in this instance could entail the removal of Policy BPH1 from the Plan (simpler) or its amendment. Whilst a neighbourhood plan can be modified / "made" far quicker than a local plan can be adopted, the process involved, with indicative

timescales, entails the following stages. These would require confirmation / legal advice.

Stage	Comment	Estimated Timescale
1. Defining the Neighbourhood Area	Not relevant in this instance, as the area is already defined	n/a
2. Preparing the Neighbourhood Plan	Potential requirement for Strategic Environmental Assessment and Habitats Regulations Assessment Screening. Would require legal advice to confirm this is needed. Likely to be done in house by the Local Planning Authority for the Town Council (speed).	Uncertain as if needed would require a response from Natural England as statutory consultee. Estimate 6 weeks
3. Pre-submission publicity and consultation	Town Council need to publicise the Neighbourhood Plan modification in a manner that is likely to bring it to the attention of people who live, work or undertake business in the neighbourhood area.	6 weeks public consultation plus 4 weeks for Town Council consider of responses and preparing next stage.
4. Plan submitted to the local planning authority	Plan submitted by Town Council to the Local Planning Authority to administer remainder of the process.	2 weeks LPA preparation plus 6 weeks public consultation
5. Independent Examination	Borough Council need to appoint independent examiner to consider the Plan modification and all comments upon it.	6 weeks
5a. Record of Decision	Borough Council considers whether to accept examiner's recommendations.	Up to 2 weeks
6. Referendum	Borough Council to organise. Voting concluded over 1 day. Legal advice required to confirm this stage is needed (likely).	7 weeks from previous stage
7. "Making" the Neighbourhood Plan	Plan is effectively "made" in any event if <u>successful outcome at Referendum</u> (50% plus vote in favour).	(2 weeks from previous stage)
Estimated Total		39 / 41 weeks

The above timescale is an estimate. If the Town Council decided to initiate modifying the neighbourhood plan, the exact procedure would need to be confirmed, including whether a Referendum (the responsibility of WLBC) would be required, which appears likely. It may be advisable to seek legal advice in connection with this and other matters (e.g. the potential for Judicial Review of a modified neighbourhood plan etc). There

would also be a need to re-confirm that the Borough Council has a suitable scheme of officer delegation of decision making in place as a requirement for any Cabinet approvals would lengthen the above estimated timescale. Purdah may also be a consideration.

The reason to modify the BPNP would be in relation dealing with a future planning application at the Yew Tree Farm safeguarded site as one could anticipate that modification may be too late for dealing with a planning application at Red Cat Lane where the enquirer has a head start by already identifying the issue. Nevertheless, timing (YTF and Red Cat Lane planning applications v modification) would need to be explored further to ensure that modification of the BPNP would be worthwhile.

There would be two alternative options to modifying the BPNP which are:

1. Do nothing.

The likelihood would be that a planning application would come forward on the safeguarded Yew Tree Farm site during 2022 (there have been enough previous enquiries and an unsuccessful 2018 appeal to support this view). The issue is then what would be the material consequences of bringing forward development? e.g. a 500 dwelling scheme would need to have a phased development and release to the market, whether the safeguarded site would become an allocation in WLLP 2023-2040. At this point in time, it would not be appropriate to speculate which sites may become new LP allocations. There is also a political dimension to the option of do nothing.

2. Revoking the BPNP

This would revoke the Plan in entirety and would be the most severe response. It would require legal advice (prospect of Judicial Review etc) and full co-operation of the Town Council. The Secretary of State may revoke a neighbourhood plan or a Local Planning Authority may revoke it with permission of the SoS and reasons must accompany the revocation.

Footnote

Exact quote from Section 38(5) of the Planning and Compulsory Purchase Act 2004:

“If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan.”