



**REPORT of
DIRECTOR OF SERVICE DELIVERY**

to
**DISTRICT PLANNING COMMITTEE
23 JANUARY 2024**

MEMBERS' UPDATE

AGENDA ITEM NO. 6

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| Application Number | 23/00853/FULM |
| Location | Land North West Of 2 Maldon Road, Burnham-On Crouch |
| Proposal | Erect 40no. Flats and associated infrastructure, access ways, parking, and landscaping; construct enlarged detention basin; and provide additional parking spaces for approved medical centre |
| Applicant | Mr Ian Holloway – Burnham Waters Limited |
| Agent | Mr Stewart Rowe – The Planning and Design Bureau |
| Target Decision Date | 22/01/2024 |
| Case Officer | Kathryn Mathews |
| Parish | BURNHAM-ON-CROUCH NORTH |
| Reason for Referral to the Committee / Council | Major Application |

CORRECTION TO REPORT (PAGE 74 PARA: 5:11.1)

5.11.1 This paragraph is to be deleted and no longer part of this report. It does not reflect the Councils current position in that the Local Plan Policies are not considered to be out of date. The Tilted Balance therefore is not engaged.

Commentary:

The Key reference is para 225 of the NPPF which states the following:

However, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

The report at 5.4.7 states the following:

Whilst the Council is able to demonstrate a 5YHLS, it is still necessary to assess whether the proposed development is 'sustainable development' as defined in the NPPF. If the site is considered sustainable then the NPPF's 'presumption in favour of sustainable development' applies. Furthermore, where the development plan is 'absent, silent or relevant policies are out of date', planning permission should be

*granted 'unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or that specific policies in this Framework indicate development should be restricted'. **Policies relevant to the assessment of the proposal the subject of the current application are still in general conformity with the NPPF and the current 5YHLS position suggests that the Council's spatial strategy in relation to the delivery of sufficient housing land is effective. Therefore, it is considered that significant weight can still be applied to the LDP Policies, including Policy S8, in the assessment and determination of this planning application.***

The Council's position is underlined by recent case law in *Paul Newman New Homes Ltd v Secretary of State for Housing, Communities And Local Government* [2021] EWCA Civ 15. In that case, the Inspector, in dismissing the appeal found the Council had a five-year housing land supply and that the presumption in favour of the development under paragraph 11 (d) – 'the tilted balance' was inapplicable and the benefits of the scheme did not outweigh its harms. The Court of Appeal accepted the Inspector's conclusion, which had previously been upheld by the Planning Court. The former Aylesbury Vale District Council relied on a 2004 Local Plan which was found to be relevant, important and 'up to date'. The salient point here being that the need for a Local Plan review does not make the Plan out of date and as such, a time expired Plan was not by this fact alone 'out of date' for the purpose of paragraph 11 (d) of the NPPF nor to trigger the tilted balance.

The relevant policies Maldon District Local Plan are considered to be consistent with the NPPF and they are not 'out of date'. Therefore, in line with case law, the tilted balance does not apply.