



Ministry of Housing,  
Communities &  
Local Government

Richard Lomas  
Gladman Development Ltd  
Gladman House, Alexandria Way,  
Congleton,  
Cheshire  
CW12 1LB

Our ref: APP/A1530/W/19/3223010  
Your ref: -

7 April 2020

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY GLADMAN DEVELOPMENT LTD  
97 (AND LAND ADJACENT TO) BARBROOK LANE, TIPTREE, COLCHESTER, CO5  
0JH  
APPLICATION REF: 182014**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Siobhan Watson BA(Hons) MCD MRTPI, who held a public local inquiry between 3-6 September 2019 into your appeal against the decision of Colchester Borough Council to refuse your application for outline planning permission for the development of up to 200 dwellings (including 30% affordable housing), provision of 0.6ha of land safeguarded for school expansion, new car parking facility, introduction of structural planting and landscaping and sustainable drainage system (SuDS), informal public open space, children's play area, demolition of 97 Barbrook Lane to form vehicular access from Barbrook Lane, with all matters to be reserved except for access, in accordance with application ref: 182014, dated 9 August 2018.
2. On 2 October 2019, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be allowed and planning permission be granted subject to conditions.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, and agrees with her recommendation. He has decided to allow the appeal and grant planning permission subject to conditions. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

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Planning Casework Unit  
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## **Matters arising since the close of the inquiry**

5. Through representations from both the appellant and the Council, the Secretary of State is aware of two subsequent appeal decisions issued by the Planning Inspectorate against the refusal of planning permission by Colchester Borough Council, those being:
  - Land adjoining the Red Lion Public House, 130 Coggeshall Road, Marks Tey, Colchester, CO6 1LT - ref APP/A1530/W/19/3230908, dated 7 November 2019 (the Red Lion appeal), and;
  - Land at Queen Street, Colchester, CO1 2PJ - ref APP/A1530/W19/3231964, dated 13 December 2019 (the Queen Street appeal)
6. The Secretary of State is satisfied that no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties. A list of representations which have been received since the inquiry is at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.
7. On 13 February 2020 the 2019 Housing Delivery Test measurements were published. Colchester Borough Council's measurement increased from 120% (2018 measurement) to 122% (2019 measurement). As this resulted in no material change relevant to this appeal, the Secretary of State is satisfied this did not warrant further investigation or necessitate additional referrals back to parties.

## **Policy and statutory considerations**

8. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
9. In this case the development plan consists of the Colchester Core Strategy (2008) as amended by the Focussed Review (2014) (CS), the Local Development Framework Development Policies 2010 with selected policies revised July 2014 (DPD). The Secretary of State considers that relevant development plan policies include those set out at IR12.
10. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), the Red Lion appeal, and the Queen Street appeal. The revised National Planning Policy Framework was published on 24 July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the 2019 Framework.

## ***Emerging plans***

11. Emerging plans comprise the emerging Local Plan (eLP), which is partly being produced in co-operation with Tendring and Braintree District Councils (the North Essex Authorities), and the emerging Tiptree Neighbourhood Plan (eNP). The Secretary of State considers that the emerging policies of most relevance to this case include those set out at IR24 for the eLP and at IR13 for the eNP.
12. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan;

(2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework.

13. The Secretary of State notes that the eLP was originally submitted for examination in October 2017, but was withdrawn after the examining Inspector wrote to the North Essex Authorities in June 2018 advising that elements of the evidence base required “significant further work” (IR14-15). He notes much of the examining Inspector’s concern was around the proposed “Cross-boundary Garden Communities”, along with their associated infrastructure, rate of delivery, and their financial viability (IR15-22). He notes that the North Essex Authorities chose to pause the inspection to conduct further work on the evidence base (IR23). The Secretary of State also notes that, since the close of the Inquiry, the examination of the North Essex Authority local plans has resumed, with further hearings held in January 2020. As there are still a number of stages to complete before the plan can progress to adoption, the Secretary of State agrees with the Inspector at IR162 that only very limited weight can be given to the relevant housing policies in the eLP.
14. The eNP underwent a Regulation 14 public consultation between June and July 2019. Following this, it was submitted to Colchester Borough Council on 27th March 2020. The council is now proceeding with preparations for the Regulation 16 consultation and the appointment of an examiner. As the eNP must still go through further stages before it can progress to a referendum and be formally made, and because of the continued uncertainty around housing numbers in the eLP that will directly impact on the eNP, the Secretary of State agrees with the Inspector (IR164) that it can attract only limited weight.

## **Main issues**

### *Prematurity*

15. Paragraph 49 of the Framework advises that prematurity is unlikely to justify a refusal of planning permission other than in the limited circumstances where both
  - a. the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan; and
  - b. the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.

For the reasons set out at paragraphs 11-14 of this Decision Letter and at IR158-164, the Secretary of State agrees with the Inspector (IR165) that a dismissal based on prematurity would not be justified and would be contrary to the Framework.

16. The Secretary of State has carefully considered the Inspector’s analysis at IR166 of the appeal decisions in Hambrook and West Bergholt. For the reasons given there, he agrees that these are not directly comparable to this appeal.

### *Housing Land Supply*

17. The Secretary of State notes that the parties disagreed on the ability of the local authority to demonstrate a five-year supply of housing land, with the appellant calculating a figure of 3.66 years, and the local authority calculating a figure of 5.13 years.
18. The Secretary of State notes that the Inspector undertook roundtable sessions as part of the Inquiry on a number of disputed sites, and has carefully considered her analysis of these between IR172-193. He agrees with her analysis, and with her conclusion that the Council could demonstrate a housing land supply of about 4.7 years (IR194).
19. As noted at paragraph 5-6 of this Decision Letter, the Secretary of State has also carefully considered the two subsequent appeal decisions issued by the Planning Inspectorate. He notes that, while the Inspectors in these decisions both addressed Colchester's housing land supply, it was not a main issue in those appeals. He is content that the evidence presented in this appeal is the most robust available to him and therefore the most suitable for reaching a decision.
20. For these reasons, the Secretary of State agrees with the Inspector at IR194 that the local authority can demonstrate a housing land supply of 4.7 years. As this is below five years, he therefore considers that the presumption in favour of sustainable development, as set out at Paragraph 11d of the Framework, is engaged. He agrees that the provision of 200 market and affordable homes represents a substantial benefit (IR207), and considers it to carry significant weight in favour of the proposal.

### *Location of development*

21. The Secretary of State notes that CS policy SD1 identifies a settlement hierarchy, directs growth to the most accessible and sustainable locations in accordance with that hierarchy, and that Tiptree is classed as a District Settlement, the second tier on the hierarchy. He also notes that the CS seeks to sustain the character and vitality of small towns, villages, and the countryside, and that development is expected to be compatible with local character (IR143).
22. The Secretary of State notes the Inspector found the housing number and sequential approach elements of SD1 out-of-date, and agrees with her in finding no significant conflict between the settlement hierarchy and character protection aspects and the Framework. He also notes that CS H1 indicates that the distribution of new housing should be guided by the settlement hierarchy, and agrees with the Inspector's finding of this as consistent with the Framework (IR144).
23. The Secretary of State also notes that CS policy ENV1 states that unallocated greenfield land outside settlement boundaries is to be protected and where possible enhanced, and to strictly control development on such land. He agrees with the Inspector that this is somewhat more onerous than the Framework, but that the broad aim of protecting the character of the countryside is relevant to this appeal.
24. The Secretary of State notes that the site is an undeveloped area behind the existing dwellings along Barbrook Lane, and that is outside of the settlement boundary (IR143). For these reasons, he agrees with the Inspector at IR146 that it is not a location where the CS would encourage growth, and the proposal therefore conflicts with CS policies ENV1, H1 and SD1.

### *Scale of development*

25. The Secretary of State has gone on to carefully consider the Inspector's analysis of the scale of the proposal, and the likely impact it would have on the settlement (IR147-156).
26. He notes that the Inspector considered the proposal would result in loss of countryside and a change in character for the site, but because the site is well-screened by trees and surrounding development, he agrees with the Inspector that there would be little visual impact on the wider countryside (IR147). For these reasons the Secretary of State agrees that the proposal would not have a significant wider landscape impact, and that the setting of Tiptree would not be harmed.
27. The Secretary of State notes that Barbrook Lane has a carriageway width in conformance with the dimensions set out in *Manual for Streets* (2007), and that the Inspector was therefore satisfied that it was sufficiently wide to take the level of traffic associated with a proposal of this scale. He also notes that the appellant has agreed to provide a financial contribution for traffic calming (IR148). He notes that the Transport Assessment found that the proposal would not give rise to issues around highways safety or capacity, and that the Local Highways Authority did not dispute this (IR151). The Inspector also notes that no technical evidence was submitted to dispute these findings. For these reasons, the Secretary of State agrees with the Inspector (IR151) that the proposal is acceptable in highways terms.
28. The Secretary of State has considered the Inspector's analysis at IR152-155 concerning public transport, health services, sewerage and water supply. For the reasons given in that analysis, he agrees with the Inspector (IR156) that the scale of development in this proposal would not harm or prejudice local services, highways safety and traffic flow, the living conditions of neighbours, or drainage and water supply. He agrees the site is in a sustainable location and provides good access to employment and day-to-day services by a choice of transport modes.

### *Ecology*

29. The Secretary of State is the Competent Authority for the purposes of the Conservation of Habitats and Species Regulations 2017. For the reasons set out at IR195-197 he agrees with the Inspector that he is required to make an Appropriate Assessment of the implications of the proposal on the integrity of any affected European site in view of each site's conservation objectives.
30. Those sites are the Essex Estuaries Special Area of Conservation (SAC), the Blackwater Estuary Special Protection Area (SPA) / Ramsar Site, and the Abberton Reservoir SPA / Ramsar site. He also notes that the site is technically within the Zone of Influence (Zol) for the Dengie SPA / Ramsar site, but agrees with the Inspector (IR196) that, as the site is separated from the appeal site by the Blackwater Estuary, this represents a significant barrier to access, and it does not therefore require detailed consideration.
31. The Abberton Reservoir SPA and Ramsar site, and the Blackwater Estuary SPA support birds. The Blackwater Estuary Ramsar site supports saltmarsh habitat, rare invertebrate fauna and wintering waterfowl. The Essex Estuaries SAC is designated for its Atlantic salt meadows, estuaries, Mediterranean and thermo-Atlantic halophilous scrubs, sandbanks, and mudflats and sandflats with plant colonies.

32. The Secretary of State considers that, given the size of the proposal before him, it is unlikely that new residents would visit the sites in significant numbers on a regular basis, and that it is therefore unlikely that habitats would be damaged or degraded by the new residents. In particular, he has borne in mind that Furthermore, the key habitats for the qualifying species include open water (Abberton Reservoir) or estuarine habitats (Blackwater Estuary) which are generally inaccessible for walkers.
33. While he has concluded that the development would not be likely to have a significant effect on the protected sites, the Secretary of state has adopted a precautionary stance, and considers that, in the absence of avoidance or mitigation measures, there is some potential for the development proposals to contribute towards a significant effect on Blackwater Estuary SPA / Ramsar site via potential disturbance effects, and Essex Estuaries SAC via physical damage and degradation, when considered in combination with other plans and projects. He therefore concludes that an appropriate assessment is required.
34. As part of his appropriate assessment, the Secretary of state has taken into account the informal recreational opportunities for new residents delivered by the proposal, in the form of a network of open spaces, including an off-lead area for dogs, thereby maximising “on the doorstep” opportunities for new and existing residents and providing mitigation. He has also taken into account the signed planning obligation which secures payments of contributions towards mitigation measures as set out in the draft Essex Coast Recreational disturbance Avoidance and Mitigation Strategy Supplementary Planning Document 2019.
35. Natural England have confirmed that it would raise no objection to the proposed mitigation package and the broad conclusions of the IHRA submitted by the appellant. He therefore concludes in his role as the Competent Authority on this matter, that there would be no adverse effect on the integrity of the designated sites.
36. He has also had regard to the Environmental Impact Assessment submitted by the appellant, including the mitigation measures proposed, and agrees with the Inspector at IR204 that there would be no overall harm to wildlife.

#### *Other matters*

37. The proposal includes a network of informal open spaces (IR200), and 0.6ha of land that would be safeguarded for future school expansion (IR25). The Secretary of State recognises these are primarily to mitigate the effects of the development and considers they carry only limited weight in favour of the proposal.

#### **Planning conditions**

38. The Secretary of State has considered the Inspector’s analysis at IR137-138, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework and that the conditions set out at Annex B should form part of his decision.

## **Planning obligations**

39. Having had regard to the Inspector's analysis at IR139-141, the planning obligation dated 6 September 2019, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR141 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework.

## **Planning balance and overall conclusion**

40. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Policies ENV1, H1 and SD1 of the development plan, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
41. As the local authority are unable to demonstrate a five-year supply of housing land, paragraph 11(d) of the Framework indicates that planning permission should be granted unless: (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or (ii) any adverse impacts of doing so significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole.
42. The proposal is an undeveloped agricultural site outside the settlement boundary, and the rural character of the site would change. This carries moderate weight against the proposal.
43. The proposal would provide up to 200 dwellings, with 30% affordable, helping the local planning authority achieve a five-year supply of housing land. This attracts significant weight in favour of the proposal. The proposal includes informal open space and safeguarded land for a school expansion, which carry limited weight. Although the site would change from rural to a housing estate, there would be little wider impact on the setting of the village as the site is well-screened. The scale of the proposal would not harm or prejudice local services, highways or residential amenity, and the site represents a sustainable location for access to jobs and services.
44. The Secretary of State considers that there are no protective policies which provide a clear reason for refusing the development proposed. The Secretary of State considers that the adverse impacts of the proposal do not significantly and demonstrably outweigh the benefits.
45. Overall, the Secretary of State considers that the material considerations in this case indicate a decision which is not in line with the development plan. He therefore concludes that the appeal should be allowed, and planning permission granted, subject to conditions.

## **Formal decision**

46. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your appeal and grants planning permission, subject to the conditions set out in Annex B, of this decision letter for outline planning for the development of up to 200 dwellings (including 30% affordable housing), provision of 0.6ha of land safeguarded for school expansion, new car parking facility, introduction of structural planting and landscaping and sustainable drainage system

(SuDS), informal public open space, children's play area, demolition of 97 Barbrook Lane to form vehicular access from Barbrook Lane, with all matters to be reserved except for access.

47. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

### **Right to challenge the decision**

48. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

49. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

50. A copy of this letter has been sent to Colchester Borough Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Andrew Lynch*

Andrew Lynch  
Authorised by the Secretary of State to sign in that behalf

**Annex A – List of representations**

**Annex B – List of conditions**



## Annex A – List of Representations

### General representations

<b>Party</b>	<b>Date</b>
Colchester Borough Council	13 December 2019
Gladman Development Ltd	16 December 2019
Rt Hon Priti Patel MP	10 January 2020
Mr Edward Higgs	9 February 2020

## **Annex B – List of Conditions**

- 1) Details of the appearance, landscaping, layout and scale (hereinafter called “the reserved matters”) shall be submitted to and approved in writing by the Local Planning Authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority no later than the expiration of three years beginning with the date of the grant of this outline permission; and the development to which this permission relates must be begun no later than the expiration of two years from the date of approval of the last of the reserved matters to be approved.
- 3) The development hereby permitted shall be carried out in complete accordance with the following plans: Site Location Plan ref CSA/3725/111 and the Access Plan ref 2179-F01 Rev B.
- 4) The reserved matters application(s) shall include detailed scale drawings by cross section and elevation that show the development in relation to adjacent property, and illustrating the existing and proposed levels of the site, finished floor levels and identifying all areas of cut or fill. The development shall thereafter be completed in accordance with the agreed scheme before development is first occupied.
- 5) No works shall take place until details of all earthworks have been submitted to and agreed, in writing, by the Local Planning authority. These details shall include the proposed grading and mounding of land areas including the levels and contours to be formed, showing the relationship of proposed mounding to existing vegetation and surrounding landform. The development shall thereafter be carried out in accordance with the approved details.
- 6) No works shall take place until all trees, shrubs and other natural features not scheduled for removal on the approved plans have been safeguarded behind protective fencing to a standard that will have previously been submitted to and agreed, in writing, by the Local Planning Authority. All agreed protective fencing shall thereafter be maintained during the course of all works on site and no access, works or placement of materials or soil shall take place within the protected areas without prior written consent from the Local Planning Authority.
- 7) No burning or storage of materials shall take place where damage could be caused to any tree, shrub or other natural feature to be retained on the site or on adjoining land.
- 8) All existing trees and hedgerows shall be retained throughout the development construction phases, unless shown to be removed on the approved drawing and all trees and hedgerows on and immediately adjoining the site shall be protected from damage as a result of works on site. All existing trees and hedgerows shall then be monitored and recorded for at least five years following contractual practical completion of the development. In the event that any trees and/or hedgerows die, are removed, destroyed, or fail to thrive during this period, they shall be replaced

during the first planting season thereafter to specifications agreed, in writing, with the Local Planning Authority. Any tree works agreed to shall be carried out in accordance with BS 3998.

- 9) No works or development shall be carried out until and Arboricultural Implications Assessment, Arboricultural Method Statement and Tree Protection Plan in accordance with BS 5837, have been submitted to and approved, in writing, by the Local Planning Authority (LPA). This shall be carried out in accordance with the submitted Tree Survey and Arboricultural Impact Assessment referenced CSA/3725/04 dated January 2019. Unless otherwise agreed, the details shall include the retention of an Arboricultural Consultant to monitor and periodically report to the LPA, the status of all tree works, tree protection measures, and any other arboricultural issues arising during the course of development. The development shall then be carried out strictly in accordance with the approved method statement.
- 10) During all construction work carried out underneath the canopies of any trees on the site, including the provision of services, any excavation shall only be undertaken by hand. All tree roots exceeding 5 cum in diameter shall be retained and any pipes and cables shall be inserted under the roots.
- 11) At least 3.24 hectares of land within the redline boundary shall be laid out for use as amenity open space in accordance with a scheme (including phasing) which shall be submitted to and agreed, in writing, by the Local Planning Authority before the development commences. The space shall be made available for use within 12 months of the occupation of the first dwelling and thereafter it shall be retained for public use.
- 12) Prior to commencement of the development, details of a scheme of traffic management works at the Barbrook Lane/Grove Road junction shall be submitted to and approved in writing by the Local Planning Authority. The agreed works shall be implemented in full in accordance with the approved details prior to the first occupation of any dwelling hereby approved.
- 13) No occupation of the development shall take place until the following have been provided or completed:
  - a. A priority junction off Barbrook Lane to provide access to the appeal site as shown in principle on the drawing hereby approved.
  - b. Upgrade to two bus stops before any dwelling is first occupied. The details of the upgrade shall be submitted to and approved in writing prior to the occupation of any dwelling.
  - c. Residential travel information packs as prior approved by the local planning authority. The information packs shall be provided to each dwelling before they are occupied.

- 14) No works shall take place until a detailed surface water drainage scheme for the site has been submitted to and approved in writing by the Local Planning Authority based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development. The scheme shall include but not be limited to:
- a. Limiting discharge rates from the site to the 1 in 1 year greenfield run-off rate or as close as is reasonably practicable for the 1 in 1 year and 1 in 100 year rainfall events;
  - b. Provide sufficient surface water storage so that the runoff volume is discharged or infiltrating at a rate that does not adversely affect flood risk and that unless designated to floor that no part of the site floods for a 1 in 30 year event, and 1 in 100 year event in any part of a building or utility plant within the development;
  - c. Provide sufficient storage to ensure no off-site flooding as result of the development during all storm events up to and including the 1 in 100 year plus climate change event;
  - d. Provide details of pre and post 100 year, 6 hour runoff volume;
  - e. Provision of suitable "urban creep" allowance;
  - f. Final modelling and calculations for all areas of the drainage system;
  - g. The appropriate level of treatment for all runoff leaving the site, in line with the CIRIA SuDS Manual C753;
  - h. Detailed engineering drawings of each component of the drainage scheme;
  - i. A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features;
  - j. A written report summarising the final strategy and highlighting any minor changes to the approved strategy;
  - k. A scheme to minimise the risk of offsite flooding during the construction works.

The approved scheme shall subsequently be implemented prior to occupation of the first dwelling.

- 15) No works shall take place until a Maintenance Plan detailing the maintenance arrangements including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, has been submitted to and agreed, in writing, by the Local Planning Authority. Should any

part be maintainable by a maintenance company, details of long term funding arrangement shall be provided.

- 16) The applicant or any successor in title must maintain yearly logs of maintenance which should be carried out in accordance with any approved Maintenance Plan. These must be available for inspection upon request by the Local Planning Authority.
- 17) No development shall take place until an investigation and risk assessment, in addition to any assessment provided with the planning application, has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the prior written approval of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings shall be submitted to and approved in writing by the Local Planning Authority before the commencement of development. The report and findings shall include:
  - a. A survey of the extent, scale and nature of contamination, including contamination by soil, gas and asbestos;
  - b. An assessment of the potential risks to, human health; property, crops, livestock, pets, woodland and service lines and pipes; adjoining land; groundwaters and surface waters; and ecological systems.
  - c. An appraisal of remedial options and proposal of the preferred option(s).
  - d. The above shall be conducted in accordance with DEFRA and the Environment Agency's *Model Procedures for the Management of Land Contamination CLR11* and the Essex Contaminated Land Consortium's *Land Affected by Contamination: Technical Guidance for Applicants and Developers*.
- 18) No works shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, the natural environment has been submitted to and agreed in writing by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
- 19) No development shall place until the remediation scheme is carried out in accordance with the approved details. The Local Planning authority shall be given two weeks written notification of commencement of the remediation works. Following completion of the remediation works a verification/validation report that demonstrate the effectiveness of the remediation carried out must be produced and approved in writing by the Local Planning Authority before any dwelling is constructed.

- 20) In the event that contamination not previously identified, is found at any time when carrying out the approved development, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with Conditions 17-19.
- 21) No development shall take place until a Construction Method Statement has been submitted to and approved in writing, by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period and shall provide details for:
- a. The parking of vehicles of site operatives and visitors;
  - b. Hours of deliveries and hours of work;
  - c. Loading and unloading of plant and materials;
  - d. Storage of plant and materials;
  - e. The erection and maintenance of security hoardings;
  - f. Wheel washing facilities;
  - g. Measures to control the emission of dust and dirt during construction; and
  - h. A scheme for recycling/disposing of waste resulting from demolition and construction.
- 22) The reserved matters application(s) shall include a detailed acoustic assessment and mitigation report. The report shall have been undertaken by a competent person and provide details of the noise exposure at the façade of the residential dwellings; internal noise levels in habitable rooms and noise levels in all associated amenity spaces. The design and layout shall avoid, as far as practicable, exposure of habitable rooms to noise levels that exceed the following: NPR – 60dBLAeq 16 hours (daytime outside); 55dBLAeq 8 hours (night outside)
- 23) The reserved matters application(s) shall include a Biodiversity Method Statement, a Construction Environmental Management Plan, a 5-10 year Management Plan and a scheme of biodiversity and habitat retention, mitigation (including a detailed lighting scheme), protection and enhancement, including an implementation timetable, to include but not be limited to the details set out in the Ecological Reports submitted with the application. The development shall thereafter be carried out in accordance with the agreed details.
- 24) No development shall take place until a Written Scheme of Investigation of archaeological remains shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions - and:

- a. The programme and methodology of site investigation and recording;
- b. The programme for post investigation assessment;
- c. The provision to be made for analysis of the site investigation and recording;
- d. The provision to be made for publication and dissemination of the analysis and records of the site investigation;
- e. The provision to be made for archive deposition of the analysis and records of the site investigation;
- f. The nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.

25) No development shall commence until a detailed mitigation and avoidance scheme for the Essex Coast European sites is submitted to and approved in writing by the Local Planning Authority (in consultation with Natural England). It will include:

- a. Final details of the enhancements to on-site open space, including the provision of an off-lead dog area, dog bins, pedestrian connection to Grove Road and an interpretation board and
- b. A scheme for the promotion of alternative informal recreational routes in the local area including details of an information pack to be supplied to all new residents.

26) The reserved matters application(s) shall include details of a scheme to facilitate pedestrian access to the northern redline boundary of the site.



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# Report to the Secretary of State for Housing, Communities and Local Government

by Siobhan Watson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Date: 18 November 2019

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Town and Country Planning Act 1990

Appeal by Gladman Development Ltd against the refusal of  
Colchester Borough Council to grant

“outline planning for the development of up to 200 dwellings (including 30% affordable housing), provision of 0.6ha of land safeguarded for school expansion, new car parking facility, introduction of structural planting and landscaping and sustainable drainage system (SuDS), informal public open space, children’s play area, demolition of 97 Barbrook Lane to form vehicular access from Barbrook Lane. All matters to be reserved except for access.”

at

97 (and land adjacent to) Barbrook Lane, Tiptree, Colchester, CO5 0JH

Inquiry Held on 3-6 September 2019

97 (and land adjacent to) Barbrook Lane, Tiptree, Colchester, CO5 0JH

File Ref: APP/A1530/W/19/3223010



**File Ref: APP/A1530/W/19/3223010**

**97 (and land adjacent to) Barbrook Lane, Tiptree, Colchester, CO5 0JH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Gladman Development Ltd against the decision of Colchester Borough Council.
- The application Ref 182014, dated 9 August 2018, was refused by notice dated 25 January 2019.
- The development proposed is "outline planning for the development of up to 200 dwellings (including 30% affordable housing), provision of 0.6ha of land safeguarded for school expansion, new car parking facility, introduction of structural planting and landscaping and sustainable drainage system (SuDS), informal public open space, children's play area, demolition of 97 Barbrook Lane to form vehicular access from Barbrook Lane. All matters to be reserved except for access."

**Summary of Recommendation: That the appeal be allowed and planning permission be granted subject to conditions.**

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### Procedural Matters

1. The Inquiry was held at Colchester Town Hall on 3-6 September 2019. I made an unaccompanied site visit on the afternoon of 5 September during which I observed the entire site as well as Barbrook Lane, Grove Road and their junctions.
2. The appeal was recovered by the Secretary of State (SoS) by a direction made under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990 on 2 October 2019. The reason for this direction is that the appeal involves a proposal for residential development of over 150 units which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.
3. On the information available at the time of making the Direction, the statements of case and the evidence submitted to the Inquiry, the following are the matters on which the SoS needs to be informed for the purpose of his consideration of these appeals:
  - i) The extent to which the location of the proposed development is consistent with the adopted development plan for the area;
  - ii) The effect of the proposed scale of development on the character and appearance of the countryside; highway safety and congestion; local day to day amenities and services and the living conditions of neighbours;
  - iii) Whether the proposed development is premature in the light of the emerging Colchester Borough Local Plan 2017-2033 (eLP) and the emerging Tiptree Neighbourhood Plan (eNP);
  - iv) Whether the proposed development is necessary to meet the housing needs of the district bearing in mind the housing land supply position;
  - v) Whether any permission should be subject to any conditions and if so, the form these should take; and

- vi) Whether any planning permission granted should be accompanied by any planning obligations under section 106 of the 1990 Act and if so, whether the proposed terms of such obligations are acceptable.
4. The application was submitted in outline with all matters reserved except for access.
  5. A supplementary Statement of Common Ground (SoCG) was submitted at the start of the Inquiry which confirmed that the Council was no longer pursuing reasons for refusal 3, 4 and 5 which related to Habitat Regulations, archaeology and planning obligations as these matters had been resolved by the completed S.106 and the planning conditions that are agreed between the parties. There is also a specific housing SoCG. Copies of all the proofs of evidence, appendices and summaries have been supplied to the SoS. The Council, appellants and other parties provided additional documents at the Inquiry. The document lists are at the end of this Report.
  6. The Right Honourable Priti Patel MP (MP for Witham) has made representations.

### **Environmental Impact Assessment (EIA)**

7. The proposed development falls within the description at paragraph 10(b) of Schedule 2 of the 2001 Regulations<sup>1</sup>. A Screening Option was issued by the Council to the effect that the development would be unlikely to have significant impacts on the environment and therefore did not require an EIA. The SoS considered the matter and having taken into account the criteria in Schedule 3 to the above Regulations, came to the same view that the proposed development would not be likely to have a significant effect on the environment by virtue of factors such as its nature, size or location. I agree that the proposed development is not EIA development and therefore it does not require the submission of an Environmental Statement.

### **The Site and Surroundings**

8. The site is an undeveloped area of around 9.8 hectares. It is on the edge of the developed area of Tiptree which is classed as a District Settlement in the CS. It adjoins yet is outside of the settlement boundary. It is behind dwellings on Barbrook Lane in Tiptree and includes the dwelling of 97 Barbrook Lane which would be demolished to make way for the access. The site comprises mainly of grassland fields with boundary hedgerows and treelines, an orchard, ponds and a stream. There are school buildings and school land to the east of the site and open countryside to the north and west.
9. There is no formal point of access at present other than the existing gated access track next to No 97. Barbrook Lane is a two-way carriageway of around 4.8m wide. It is subject to a 30mph speed limit and benefits from street lighting. There are "No Stopping" and "Keep Clear" markings at the section where Barbrook Lane provides access to Milldene Primary School.

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<sup>1</sup> The Town and Country Planning (Environmental Impact Assessment) Regulations 2011

10. One end of Barbrook Lane meets with Maypole Road (B1022) which provides links towards Colchester and the A12 for strategic links throughout the wider area. The other end of Barbrook Lane forms a priority-controlled junction with Grove Road which in turn meets Newbridge Road and Church Road (B1023). Church Road enters the centre of Tiptree.
11. A plan showing the relationship of the appeal site to its surroundings can be found in Core Document (CD 1.02)<sup>2</sup>

### **Planning Policy**

12. The parties refer to national planning legislation<sup>3</sup> and to a number of local planning policy documents which are listed in Section 3 of the SoCG. The development plan for the area is the Colchester Core Strategy (2008) as amended by the Focussed Review (2014) (CS) (CD8.02) and the Local Development Framework Development Policies 2010 with selected policies revised July 2014 (DPD) (CD8.03). The following saved policies are agreed by both main parties to be relevant to this appeal:

#### *Core Strategy*

- Policy SD1 - Sustainable Development Locations
- Policy SD2 – Delivering Facilities and Infrastructure
- Policy SD3 – Community Facilities
- Policy H1 – Housing Delivery
- Policy H4 – Affordable Housing
- Policy UR2 – Built Design and Character
- Policy PR1 - Open Space
- Policy TA4 – Roads and Traffic
- Policy ENV1 – Environment

#### *Development Policies*

1. Policy DP1 – Design and Amenity
2. Policy DP3 – Planning Obligations and the Community Infrastructure Levy
3. Policy DP17 – Accessibility and Access
4. Policy DP20 – Flood Risk and Management of Surface Water Drainage

#### *Tiptree Neighbourhood Plan (eNP) (CD 9.10)*

13. The Tiptree Neighbourhood Plan area was designated by Colchester BC on 2nd February 2015. The draft Neighbourhood Plan was subject to public consultation (under Regulation 14) between 8 June 2019 – 21 July 2019. Parties disagree with

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<sup>2</sup> Site Location Plan CSA/3725/111

<sup>3</sup> Planning and Compulsory Purchase Act 2004

the weight that can be attributed to the eNP. The most relevant policy in the eNP is Policy TIP01.

*Emerging Local Plan (eLP) (CD 9.06)*

14. The Council has been working jointly with Tendring and Braintree District Councils since 2014 to bring forward Local Plans with a common Section 1. All three plans were submitted for examination in October 2017 and hearing sessions began in January 2018.
15. On 8<sup>th</sup> June 2018 the examining Inspector wrote to the North East Essex Authorities (NEAs) (CD 9.01). He advised them of the aspects of the Plan and its evidence base which he considered to require significant further work. The most relevant to this appeal is in relation to Chapter 8 of Section 1 (Shared Strategic Plan) of the eLP, "Cross-Boundary Garden Communities" (GCs). It is the eLP examination which must determine whether or not the GCs are properly justified and realistically developable. This is of more than usual importance given the large scale and long-term nature of the GC proposals, two of which would take around 30 years to complete and the other at least 40 years.
16. The Inspector reported that the proposed approach to the GCs is innovative and ambitious and if carried out successfully, it has the potential to provide for housing and employment needs: not just in the current Plan period but well beyond it. However, in his view, the evidence to support the GC policies in the submitted plan was lacking in a number of respects. He found the following main deficiencies:
  17. The GCs could not be developed in full without the additional strategic road capacity provided for by the A12 Chelmsford to A120 widening scheme and the A120 to A12 duelling scheme. There was insufficient evidence that the A120 duelling scheme could be fully funded. Moreover, the two alternative alignments under consideration for the widened A12 in the Marks Tey area were not compatible with the proposed layout of the Colchester/Braintree Garden Community. The NEAs had made a bid to Government for funds to facilitate a further alignment but the outcome was not yet known.
  18. A rapid transit system (RTS) for North Essex is an integral part of the GC proposals which are proposed to be planned around integrated and sustainable transport systems. However, the planning of the proposed RTS had reached only a very early stage. The Inspector was unconvinced that the RTS could be delivered on time.
  19. The existing Marks Tey railway station, on the Great Eastern Main Line (GEML) between London and Norwich, is within, but close to the eastern edge of the indicative boundary of the Colchester Braintree GC. Its current peripheral position would integrate poorly with the structure of the GC. The Colchester Braintree GC Concept Framework proposes its relocation some 2km to the south-west, where it would form part of a transport interchange in the new town centre. There was insufficient evidence that this could be delivered on time.
20. The Inspector also had concerns in respect of the delivery of market and affordable housing in the GC indicating that delivery would not be as rapid as suggested by the NEAs. He was also concerned that the GC policies contain neither specific nor indicative figures for the amount of employment land or

floorspace to be provided at each of the GCs even though the North Essex GC Charter's Principle 3 seeks to provide access to one job per household within each new GC or within a short distance by public transport.

21. The Inspector also had concerns about the financial viability of the GCs in respect of transport infrastructure costs; interest costs of the purchase of the land for the GCs; contingencies; and the price of the land. He concluded that it has not been demonstrated that the GCs proposed in the submitted Plan were financially viable.
22. Overall, the Inspector considered that the GC proposals were not adequately justified and have not been shown to have a reasonable prospect of being viably developed. As submitted, he concluded that they are unsound. He advised that simultaneously bringing forward three GCs on the scale proposed in the submitted Plan is likely to be difficult to justify. He provided three options for the NEAs. 1) remove the GC proposals from the Section 1 Plan, 2) carry out the necessary further work on the evidence base and sustainability appraisal, and bring forward revised strategic proposals before the commencement of the Section 2 examinations and 3) withdraw the Section 1 and Section 2 Plans from examination and resubmit them with revisions.
23. The NEAs chose Option 2, to carry out further work on the evidence base and sustainability appraisal and bring forward revised strategic proposals. Due to the considerable length of time this is likely to involve, the examination of Section 1 has been suspended. Further Section 1 hearings will need to be held to consider the revised strategic proposals.
24. The eLP is a material consideration in the determination of this appeal. The Parties disagree over the weight that can be attributed to it. However, the two main parties agree that the relevant policies are:
  - SP2 – Spatial Strategy for North Essex
  - SP3 – Meeting Housing Needs
  - SP6- Place Shaping Principles
  - SG1- Spatial Hierarchy
  - SG2- Housing Delivery
  - SG7- Infrastructure Delivery and Impact Mitigation
  - SG8- Neighbourhood Plans
  - ENV1- Environment
  - ENV5 – Pollution and Contaminated Land
  - PP1- Generic Infrastructure and Mitigation Requirements
  - SS14- Tiptree
  - DM2- Community Facilities
  - DM8- Affordable Housing
  - DM10- Housing Diversity

- DM18- Provision of Public Open Space
- DM24- Sustainable Drainage Systems
- SP1B- Proposed Modifications Policy Recreational Disturbance Avoidance and Mitigation Strategy (This was proposed by the North Essex Authorities, during the Examination hearing sessions to reflect the latest position with the Essex Coast RAMS).

### **The Proposal**

25. The proposal is for outline planning permission for the development of up to 200 dwellings (including 30% affordable housing), provision of 0.6ha of land safeguarded for school expansion, new car parking facility, introduction of structural planting and landscaping and sustainable drainage system (SuDS), informal public open space, children's play area and the demolition of 97 Barbrook Lane to form vehicular access from Barbrook Lane. All matters are reserved except for access.
26. The application originally included the provision of land for a medical facility but this was removed from the proposal. This is because the Tiptree Medical Centre and the North East Essex Clinical Commissioning Group (CCG) no longer required land on the site and instead requested a financial contribution towards the provision of medical facilities. This contribution has been incorporated into the S.106 agreement.
27. The inclusion of expansion land for Milldene Primary School was included after the submission of the application following a consultation response from Essex County Council Economic Growth and Development which established that developer contributions would be required towards education provision. A land transfer of part of the site, as secured by the S.016 agreement, would constitute the education contribution.
28. The proposed residential area would be around 5.7 hectares which would equate to some 35 dwellings per hectare. An updated Framework Plan<sup>4</sup> was submitted to reflect the changes (CD 2.02). This shows a general layout which indicates areas of land for play provision, open space, land for the school, SuDs, pump station, access, areas of planting, and potential pedestrian and recreational routes and is for illustrative purposes. The plans for approval are detailed in Section 2.5 of the SoCG.

### **Agreed Facts between the Parties**

29. For the purposes of this appeal, the five-year land supply should be assessed for the period 1st April 2019 to 31st March 2024.
30. The Council's published 2019 Housing Land Supply Position Statement (CD 10.01) covers the above period and represented the Council's latest available evidence in the context of preparing evidence for this appeal inquiry.
31. The Standard Methodology produces a 'minimum' local housing need for 1,085.85 homes per annum in the Colchester Borough. It is agreed that the five-year

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<sup>4</sup> CSA/3725/107 Rev I

housing requirement based on the Standard Methodology, applying a 5% buffer, is therefore  $1085.85 \times 5 \times 105\% = 5,701$  units.

32. The Housing Delivery Test results indicate that 120% of the number of homes required have been delivered in the previous three years in Colchester Borough.
33. To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years.
34. Sites which do not involve major development (defined as including development proposals with 9 or less dwellings) and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years.
35. Where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.

### **The Case for Colchester Borough Council**

36. The Council determined, exercising delegated powers, that planning permission should be refused for five reasons. These are set out in its decision notice dated 25 January 2019 (CD5.01). Reasons for refusal 1 & 2 remain which are the breach of development plan policy in that the proposal is contrary to the spatial strategy for development within the Borough (Core Strategy SD1, supported by H1) as the site is an unallocated greenfield site outside the settlement boundary (Core Strategy ENV1); and a breach of the eLP and emerging Tiptree Neighbourhood Plan which undermines those development plan processes, i.e. granting planning permission would be premature. Furthermore, the proposed dwellings would result in some loss of the countryside which has intrinsic character and beauty.

### *Adopted Policy*

37. The current appeal is the third appeal in Colchester in recent times which deals with the application of Policies SD1 & ENV1 and prematurity. It is the Council's case that these appeal decisions confirm that significant weight should be given to Policies SD1 and ENV1.
38. The Braiswick Inspector (CD11.01)<sup>5</sup> in the first appeal identified some conflict between Policy ENV1 and the Framework but identified it as a dominant policy as it deals with unallocated land outside of settlement boundaries. In respect of Policy SD1 he gave full weight to the part "bolted on" in 2014 which seeks to sustain the character and vitality of small towns, villages and the countryside. The West Bergholt (WB) Inspector<sup>6</sup> in the second appeal said that Policy SD1

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<sup>5</sup> APP/A1530/W/17/3178656

<sup>6</sup> APP/A1530/W/18/3207626

- contains some provisions which are generally consistent with the Framework. He also said that ENV1 is a dominant policy because it deals with unallocated land outside the settlement boundary but its provisions concerning the protection and enhancement of the countryside and strict control of development go beyond the balanced approach set out in the Framework. This balance requires decisions to contribute to and enhance the natural and local environment by, amongst other things, recognising the intrinsic character and beauty of the countryside, but in the overall context of the Framework, which includes the importance of a sufficient amount and variety of housing land coming forward where it is needed.
39. The proposal is for disproportionate, unplanned expansion of a lower tier settlement beyond its settlement boundaries. It is in clear breach of the spatial strategy. CS Table H1a (CD8.02 p52) provides for just 8% of dwellings to be developed in the District Centres including Tiptree. The Council refer to an appeal decision<sup>7</sup> in Hambrook, West Sussex to support this stance.
40. Development at Tiptree should be proportionate in size to Tiptree's role as a settlement in the Borough. It is appropriate that the Plan should restrict the scale of development within Tiptree to retain its village feel or character. Shortfalls in the supply of housing arising elsewhere in the Borough are, by their nature, more likely to rise (if at all) in the top tier of the settlement hierarchy and directing development to lower tier settlements to meet them is in conflict with the settlement hierarchy set out in the statutory development plan.
41. CS Policy SD1, supported by CS H1, steers development towards the most accessible and sustainable locations in accordance with the Settlement Hierarchy. Policy SD1 identifies Tiptree as a 'District Settlement' in contrast with the 'Regional Centre' above and the 'Rural Communities' tier below. This proposal for disproportionate, unplanned expansion of a lower tier settlement beyond its settlement boundaries is in clear breach of this spatial strategy, and full weight attaches to that breach.
42. The proposal is also in breach of CS Policy ENV1. This provides that the Council will conserve and enhance the Borough's natural and historic environment and countryside and it provides a degree of protection to unallocated greenfield land outside of the settlement boundaries. The requirement that the eLP should re-examine settlement boundaries does not imply that they should effectively be disregarded. This point applies with particular force where an eNP is proposing proportionate expansion of settlement boundaries elsewhere along its edge.
- Breach of the eLP and Prematurity*
43. The second reason for refusal refers in particular to eLP Policies SG2 and SS14 (CD9.06 p70 and p177). Policy SG1 of the eLP (CD9.06 p68) identifies Tiptree as a sustainable settlement within the third tier of the settlement hierarchy and eLP SG2 (CD9.06 p70) says that the overall distribution of new housing will be guided by the settlement hierarchy set out in eLP Policy SG1. Policy SS14 of the eLP indicates that the Tiptree NP will define the extent of a new settlement boundary for Tiptree and allocate specific sites for housing allocations to deliver 600 dwellings. There are no objections to either of these proposals as part of the eLP

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<sup>7</sup> APP/L3815/W/15/3004052



process. Neither do representations made to the eLP suggest that Policies SG2 or SS14 are likely to be changed to significantly increase the scale of housing within Tiptree over the currently proposed 600 units (2017-2033) (CD 9.06, p72). The proposed development is in breach of these key elements of eLP.

44. It is the Council's case that the eNP attracts weight by virtue of the scale of public and other engagement to date, the stage it has reached and the fact that it reflects eLP policies concerning Tiptree. The proposal is very substantially in breach of the eNP insofar as it would result in disproportionate residential development located at variance with the strategy proposed in the eLP.
45. There are a number of sites without traffic or landscape objections capable of coming forward in excess of the numbers required to meet needs across the Borough including around Tiptree. The selection between them should be through the development plan process. The scale of the proposal is such that it will fundamentally prejudice the eNP process. It will also fundamentally undermine continuing public confidence in participation in the eNP. The proposal will prejudice that part of the eLP process that concerns future residential development in Tiptree.
46. The Council referred to the WB appeal<sup>6</sup> to support its case in respect of prematurity.

#### *Housing Land Supply*

47. The WB decision<sup>5</sup> found that the Council could not demonstrate an up to date 5-year housing land supply (HLS) but the Council maintains this is wrong and it does have an up to date 5-year HLS. The Council does not agree with the WB decision in respect of the deliverability of specific sites, many of which were rejected without reasons. The Council has provided additional evidence above that which was provided at the WB inquiry, to confirm that it is able to demonstrate a 5YHLS.

#### *The relevant housing requirement*

48. The Housing Statement of Common Ground (HSCG) (CD2.16) confirms agreement between the parties that the standard method (SM) should be used to calculate local housing need for the purpose of this appeal. It then puts the position beyond doubt, confirming that '*no exceptional circumstances exist to apply an alternative figure for the purpose of this appeal*'. Lapse rates and deduction of student accommodation which have been referred to by the appellant have no part in the SM.

#### *The supply of deliverable sites*

49. The definition of "deliverable" in the Glossary to the Framework is not a closed list. *St Modwen*<sup>8</sup> (CD12.03) supports this view. The basic structure of the definition has not changed from the previous version of the Framework and if the Secretary of State had intended to reverse the effect of that case, he would have done so. The threshold for inclusion in the 5-year HLS was in the 2012

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<sup>8</sup> St Modwen Developments Ltd and SSCLG Case No: C1/2016/2001

Framework and remains in the current version. This is that there should be shown to be '*a realistic prospect*' that dwellings will be delivered in the stated timescale. In respect of lapse rates, planning permissions do not, in reality, lapse in Colchester, and the resources of the Council would be wasted in monitoring a phenomenon that does not appear to exist.

50. The Council has taken very seriously the requirement that it should produce clear evidence in respect of its 5-year HLS. During the course of the round table discussion (RTS) the Council witnesses shared their longstanding knowledge and close familiarity with both the disputed sites, the Borough and surrounding local authority areas. Their evidence was also informed by an understanding of individual developers' delivery in the Borough, and how disputed sites fit into their continuing programmes. It is the Council's case that very substantial weight should attach to this local knowledge. The appellant's knowledge of HLS supply in Colchester has been acquired, by contrast, at a distance.
51. The Appellant's argument that sites which gain planning permission after the base date should not be included in the 5-year HLS is rejected by the Council. The Council considers that sites can be included in the deliverable supply which do not already have planning permission if there is clear evidence they will be delivered and they have already been included within the relevant housing land supply statement for the monitoring period.

*Individual sites (Numbers in brackets indicate Council's claimed supply)*

*Magdalen Street (72)*

52. The WB<sup>5</sup> Inspector agreed that this would deliver 60 dwellings. This has outline planning permission for 58 dwellings and detailed permission for 5 dwellings which have been built. The principle of residential development is established by this currently extant permission and there is a detailed application under consideration for 120 dwellings. It had officer support and was likely to be heard by committee in September/October of this year. The site is part of a wider scheme of development and an access road has already been constructed which can be used for the application proposal. The units proposed are smaller than those approved and therefore the overall scale of the development would not be much greater than already approved. There is no policy limit on the numbers to be provided by the site; it is brownfield land; site assessment work has been undertaken and the applicants own the site.

*Five Ways Fruit Farm (250)*

53. The WB<sup>5</sup> Inspector agreed that this site could deliver 250 dwellings. This is an adopted allocation. A hybrid planning application for the 250 dwellings had a resolution to grant subject to a S.106 agreement. Substantial progress had been made with the S.106.
54. The two developers of this site have a good track record of delivery in Colchester and one of them, Mersea Homes, is already working on a smaller site on the other side of the road. Mersea Homes have secured the site via an Option Agreement with a single owner; they expect to immediately prepare reserved matters after planning permission is granted; the site set up is anticipated to

start in 2020 with the first completions to be ready by 2021 and that it is anticipated that there will be 100 completions per annum.

*Former Essex County Hospital (118)*

55. The WB<sup>5</sup> Inspector agreed this could deliver 108 units. The Council has been discussing the site for over 3 years; a detailed masterplan has been prepared; the site is subject of a Planning Performance Agreement and it is within a residential area. The Council was convinced that an application would be submitted before the end of September and was confident that the detailed design would be acceptable to Historic England. The development is subject of an Essex County Council funding scheme. There has been slippage against the PPA due to a need for authorisation within Essex CC. It is the County Council's intention is to progress imminently.

*University of Essex (545) (student scheme)*

56. The WB<sup>5</sup> Inspector agreed that this could deliver between 0-500 units. This has a development plan allocation. There is a current application under consideration which the parties agree works out to represent 547 dwellings after the student conversion rate is applied. The land has already been subject to flood mitigation land raise in anticipation of the development and it is protected by the Colne tidal barrier. The Council prefer student homes to be on campus and the University usually delivers housing quickly. The Council are not expecting statutory objections to the proposal.

*East of Hawkins Road (115) (student scheme)*

57. The WB<sup>5</sup> Inspector agreed that this site could deliver 113 units. The Council agrees that this site is not a residential development plan allocation but employment use is not viable on the site. In addition, there is already student accommodation on this road and there is demand for student accommodation in the area. An application for 282 rooms was being considered at the time of the Inquiry which the Council claim would equate to 115 dwellings to be added to the HLS. It had officer support and the only objection from interested parties related to car parking but the Council were confident that this objection could be overcome.

*Britannia/St Runwalds Car Park (55)*

58. The WB<sup>5</sup> Inspector agreed 60 dwellings. This site is allocated for low carbon housing. No application had been submitted but it was at an advanced stage of preparation which included full detailed drawings and structural calculations. The site is owned by the Council and would be developed by the Council's own "arm's length"<sup>9</sup> development company, Amphora Homes, which has set out a timetable for development in the Amphora Homes Business Plan which has been approved by the Council. This shows that a full application would be submitted in November, condition discharge by April 2020 and completion by the end of 2022. There is no other residential development that would look

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<sup>9</sup> Para 3.28, P10 Sean Toft Rebuttal

onto it so an application is unlikely to raise objections in respect of living conditions.

*Garrison K1 (25)*

59. This site is allocated in the development plan as the Garrison residential growth area. A major housing association own the site and it is part of a wider site which has been built out. The disputed part of the site does not have planning permission but a preliminary enquiry has been submitted. The agents are keen to submit a planning application.

*Military Road (8)*

60. This is owned by the Council and is included in the eLP housing trajectory. It is brownfield and has been cleared ready for development. A planning application with a recommendation for approval was due to be heard at the 26 September 2019 Planning Committee.

*Creffield Road (7)*

61. The site is in the eLP trajectory and it was granted planning permission on 5 September 2019. This is a material change since the West Bergholt decision.

*Wyvern Farm (Phase 2) (100)*

62. The site is proposed to be a residential allocation in the eLP. Following the WB Inquiry a detailed application for residential development has gained a resolution for approval. Engrossment of the s.106 was imminent at the time of the current Inquiry. The developer, Persimmon has a history of very rapid delivery and the site is a continuation of a development on adjoining land.

*Mill Road (150)*

63. The site is an allocation in the emerging Eight Ash Green Neighbourhood Plan and is subject to a current hybrid application for 650 dwellings. The residential element of the application is in outline. It is Council owned and a delivery timetable was submitted with the Council's evidence. Although the appellant has pointed to objections to the current application, Natural England made a Standard RAMS response which is not an objection. Sport England submitted a holding objection pending the provision of replacement Rugby Club facilities, whereas the pitches at a new sports hub which are waiting to receive the Club are due to be seeded in 2020 and they will exceed the capacity of existing facilities.

*Gosbecks Road (150)*

64. This is an emerging allocation and a full planning application on behalf of Bloor Homes was under consideration at the time of the Inquiry. There is a Planning Performance Agreement and a timetable of delivery from the developer who has a good track record of delivery. There are no ownership issues. Both sides had instructed lawyers in respect of the s.106. County Highways have confirmed that there are no issues which are not easily resolved (Doc C3).

*Chitts Hill (100)*

65. There is a resolution to grant planning permission subject to access issues being resolved and the completion of a S.106 agreement. The applicants are already on site doing some pre-commencement work. A duplicate application was submitted prior to the presentation of the existing application to committee.

*Eight Ash Green (150/0)*

66. This is an allocation in an eNP with the Examiner reporting that the eNP is sound in this respect. An outline application was under consideration at the time of the Inquiry.

*Council's Conclusions*

67. The parts of SD1 and ENV1 that are most important for the determination of the appeal are not out of date and the tilted balance is not applicable on that basis. The Council has demonstrated a 5-year HLS so the tilted balance is not applicable on that basis either.
68. The Council fully recognises the social benefits of new housing and affordable housing in particular, but these are diminished by virtue of the fact that the development would be permitted, if at all, in breach of CS and eLP policies and with fundamental prejudice to the eNP process and eLP process.
69. Formal and informal public space does not attract weight as a benefit because it is required to mitigate harm arising from the development and not well-sited for access by local residents with easier access to open space elsewhere. Any biodiversity benefits that may result are unquantified and cannot be given much weight (see the WB<sup>5</sup> decision para 57). The SuDs scheme and the land transfer to Milldene School constitutes mitigation and does not attract weight as a benefit. Economic benefits within Tiptree both temporary and permanent are acknowledged, albeit it is perfectly reasonable to take into account that such benefits are associated with the proposed allocations anyway. The benefits do not outweigh the harm resulting from the breach of development plan policy, and emerging policy and the effects of prematurity combined.

**The Case for the Appellant**

*Highways*

70. Barbrook Lane is wide enough to accommodate the additional traffic. It has a carriageway width which would allow an HGV and a car to pass in conformance with the street dimensions set out in 'Manual for Streets' (2007). The appellant's highway engineer expressed at the Inquiry that the street signs prohibiting heavy goods vehicles and construction traffic are in place in relation to the narrow section of the carriageway where Barbrook Lane becomes Grove Road. They do not apply to the whole of Barbrook Lane. The appellant has agreed to provide a financial contribution for a traffic calming measure at the Barbrook Lane/Grove Road junction. This would make it less attractive to drivers to use the narrow Grove Road and would ensure that speeds around the junction are low.

71. There is no personal injury record for Barbrook Lane<sup>10</sup>. School drop off and pick up times are relatively short periods in the day and even at those busiest times of the day, the additional traffic from the appeal site would be low and would not materially harm highway safety. The Local Highway Authority has confirmed that in its assessment, site visits were undertaken at school drop off and pick up times. In addition, there is a footway along Barbrook Lane which is wide enough to allow a pram and a pedestrian to pass. Therefore, there is a safe route for pedestrians. The Council does not object on highway grounds.
72. The contribution the development would make to the existing volume of traffic would be modest. The LHA is content the proposal would not be detrimental to highway safety and capacity.

#### *Locational Sustainability*

73. The locational sustainability of the appeal site is such that it accords with CS TA1 (accessibility and changing travel behaviour) and CS TA2 (walking and cycling). The Transport Assessment (CD 2.05) considered accessibility of the site to services and facilities. The site is highly accessible on foot and is well served by public transport including for trips to and from London.
74. The site is close to a number of local amenities including primary services as well as leisure facilities. These include the primary school, convenience store, Thurstable School, library, Asda supermarket, restaurant and public house. The site is accessible on foot. The area surrounding the site is relatively flat, making it highly conducive to trips to and from the site by cycle. The site is also accessible by rail and bus (CD 2.05, para 5.6.2/37). The Local Highway Authority (LHA) consultation response (CD 4.29) did not dissent from the assessment of the site's locational sustainability.

#### *Adequacy of Infrastructure*

75. There is no capacity constraint that would militate against the development of the site either independently or in conjunction with the allocated sites. The LHA raised no objection to the development in terms of highway safety, capacity or the adequacy of existing infrastructure to serve the development (CD 4.29). The statutory sewage undertaker, Anglian Water, also indicated that there is sufficient existing capacity to meet the proposed development needs for foul water discharge (CD 4.26). In terms of the infrastructure available for the GP surgeries, the NHS in their consultation response on the application (CD 4.14), acknowledged that with the contribution that is provided for within the Section 106 obligation their requirements are met.
76. On this basis, there is no justification for arriving at a conclusion that the scale of the development proposed in this location would cause any degree of land use

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<sup>10</sup> Croft Transport Planning and Design submitted Transport Assessment with data from [www.crashmap.co.uk](http://www.crashmap.co.uk)

harm that would be incapable of being mitigated through the Section 106 obligation or the utilisation of existing capacity in the infrastructure serving Tiptree.

*Core Strategy Policies ENV 1 and SD1*

77. Policy ENV1 is one of the most important policies in the determination of the current appeal. It requires that unallocated greenfield land outside settlement boundaries is protected and where possible enhanced in accordance with the Landscape Character Area within which the greenfield land sits.

78. The intention of the policy is a product of its time reflecting previous national policy including that of the protection of the countryside for its own sake. The latest Framework does not bring forward the same level of protection. The argument that the changes made to the wording of the relevant policy in the Framework make no material difference to earlier national policy protecting the countryside was dismissed by the Inspector in the Woolpit<sup>11</sup> appeal decision (CD 11.03 where he stated:

*"The NPPF has never and still does not exhort a restrictive approach to development outside settlements in this manner. It does not protect the countryside for its own sake or prescribe the types of development that might be acceptable."*

79. ENV 1 was considered again in the WB<sup>5</sup> appeal where the Inspector came to a similar conclusion.

80. Furthermore, the definition of the settlement boundaries referred to in Policy ENV1 are a product of the intention behind the policies as originally formulated in the CS. Those policies are a function of the requirements to meet development aspirations at that time. They would have been consistent with the housing and other requirements contained in the Regional Spatial Strategy and the then national policy, including the sequential approach to previously developed land. The eLP has identified sites outside the existing defined settlement boundaries as being appropriate for development. As a consequence, the efficacy of the settlement boundaries set in 2008 are recognised as being no longer "fit for purpose". In fact, of the Council's claimed "deliverable" supply, a significant proportion are emerging allocations on sites outside the defined settlement boundaries on the emerging allocations.

81. In terms of SD1 the Inspector in the Braiswick<sup>4</sup> decision at Paragraph 73 concluded that Policy SD1 is not fully consistent with the Framework. Similarly, he recognised that development beyond the existing fixed settlement boundaries in the CS and DPD was "inevitable" (Paragraph 78).

82. The Appellant acknowledges that the proposal conflicts with the policies in the Development Plan. However, there are other material considerations that outweigh any degree of conflict. In particular, the CS is out-of-date by conflict with the Framework and the LPA is unable to demonstrate a 5-year HLS.

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<sup>11</sup> APP/W3520/W/18/3194926

*Emerging Colchester Borough Local Plan 2013-2033*

83. A key element of the spatial growth strategy for North Essex (including Colchester) is the provision of three Garden Communities (GCs). All three GCs involve the development of greenfield sites. Within the Plan period a total of 7,500 homes are intended to be delivered by the GCs. The eLP identifies the urban area of Colchester as the most sustainable location for growth. Tiptree is again identified as a "Sustainable Settlement". The eLP (CD 9.06, para.12.9/66) states: "*Tiptree, West Mersea and Wivenhoe have automatically been included in the Sustainable Settlements category due to their larger populations and concentrations of jobs, facilities, services and function.*"
84. Table SG2 (CD 9.06, p72) refers to new allocations at Tiptree of 600 dwellings. This is a minimum figure. Of the 16 sustainable settlements that were identified, Tiptree is the borough's second largest settlement and is proposed to accept the greatest proportion of growth allocated to any individual settlement. This serves to underline the significant role and function of Tiptree within the Borough. Table SG2 also illustrates that a total of 2,600 dwellings are anticipated to be delivered from two of the three GCs in the Plan period ending 2033. If GCs cannot contribute, then housing must be met elsewhere. The examining Inspector's criticism of GCs has serious implications for the entire eLP.
85. Importantly, for the purposes of any analysis of compliance with the eLP, there is no provision in the eLP that would give rise to a conclusion that the appeal proposal was in conflict with its terms even if it carried any significant weight in the determination of the appeal.

*Emerging Neighbourhood Plan*

86. The eNP has concluded the consultation exercise following Regulation 14. Submissions have been made by the NP Steering Group in respect of the rationale behind the allocation requirement for 600 dwellings during the Plan period. Although it was asserted to have been capacity-led, the appellant's evidence is that there is no capacity restraint involved in the development of the appeal site alone or in combination with the proposed allocations. The appeal site has not been assessed in the Strategic Environmental Assessment (SEA) of the eNP (CD 9.11 p33). This will necessitate consideration at the next stage of the eNP. It cannot be treated as a foregone conclusion that the position at Regulation 14 will be continued as to do so would negate the value of a consultation exercise.
87. This means that the eNP is not at an advanced stage. The stages now to be followed will be the assessment of the consultation responses; a Reg 15 submission to the LPA and their consideration; Reg 16 consultation; appointment of an Independent Examiner and then conducting the Examination; production of the Examiner's Report; a referendum and the formal making of the NP.

*Prematurity*

88. The Council's approach to prematurity is wrong when applying Paragraphs 49-50 of the Framework. The development is not so substantial, or its cumulative effect so significant, that to grant planning permission would undermine the Plan-making process by pre-determining decisions about the scale, location or phasing



of new development that are central to an emerging Plan. Secondly, the eLP is not at an advanced stage because it has stalled. The finding of the examining Inspector is that it is not sound as submitted. The current consultation exercise and re-worked Sustainability Appraisal means that there are a number of stages that have to be proceeded with before the matter can be returned to the Examining Inspector. This would involve public consultation on the new material and evidence base and the assessment of the consultation responses. The matter then must be re-scheduled for the examination hearings before the Inspector. This involves the opportunity of those engaged in the Plan process to test the new evidence base. Therefore, it is the appellant's case that the eLP can only be given very limited weight.

89. Consideration of the weight to be given to this eLP was made in an appeal with Tendring District Council (one of the three Essex Authorities) in September 2018 (CD 11.05). The Inspector at Paragraph 111 stated:

*"However, in this case the Examining Inspector's Stage 1 findings represent a considerable setback for the eLP. There is now a very significant question-mark over the soundness of the centrepiece of the plan, the GCs proposals. Whichever option is ultimately pursued by the joint authorities, significant further work will be required to address the matters identified. In these circumstances it would be wrong to conclude that the eLP was at an advanced stage."*

90. Furthermore, the issue was also addressed in the context of prejudicing the outcome of the eLP in the Braiswick<sup>4</sup> appeal. The Inspector, at Paragraph 72 stated:

*"Whilst I acknowledge the Council's concerns about the knock-on effects should permission be given for an unallocated site outside the settlement boundary, the development is not so substantial, or its cumulative effects would not be so significant, that permission would undermine the plan-making process. Dismissal of the appeal on the grounds of prematurity is not justified."*

91. This was at a point where the soundness issue had not emerged. The Braiswick<sup>4</sup> Inspector was therefore looking at an eLP that would be regarded as more advanced than the current position. Far from being advanced, the eLP should be seen as having reversed in its progress towards adoption.

92. The issue was also once again re-visited at the WB<sup>5</sup> appeal with the LPA once again maintaining that the grant of planning permission should be refused on the grounds of prematurity. The Inspector, at Paragraph 60 did not agree with the Council's argument.

#### *Benefits of the Proposal*

93. The appellant contends that the benefits of the proposal would be the provision of housing in a sustainable location; the provision of 30% affordable housing in an area of a severe shortage of affordable housing especially as the provision of

affordable housing would be 10% more than required by the CS; the provision of public open space within the site and provision of public access to open space beyond. There would also be economic benefits in respect of the construction of the dwellings and the contribution that new residents would make to local shops and services.

#### 5-year HLS

94. In the 2012 Framework, a deliverable housing site was defined by reference to footnote 11:

*"To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within 5 years and in particular, that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires. Unless there is clear evidence that schemes will not be implemented within 5 years, for example they will not be viable, there is no longer a demand for the type of units or sites have long-term phasing plans."*

95. Thus, it was clear that the threshold was one of "realistic prospect" and that planning permissions were to be considered deliverable unless there was clear evidence to demonstrate that the scheme would not be implemented within 5 years.

96. The latest Framework results in making the threshold higher. Annex 2: "Glossary" defines "deliverable" as follows:

*"To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within 5 years. In particular:*

*(a) Sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within 5 years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long-term phasing plans).*

*(b) Where a site has outline planning permission for major development, has been allocated in the development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on sites within 5 years."*

97. The major change relates to sub-paragraph (b) which requires that such sites should only be considered deliverable where there is clear evidence that housing completions will begin on site within 5 years.

98. Those sites in sub-category (b) have now been placed in a position where there is no presumption of deliverability. They are not to be considered deliverable in the absence of clear evidence that housing completions will begin.

99. The case of *Wainhomes (South West) v. SoS* (CD12.2) continues to be relevant insofar as it addresses the “available now” component of national policy. The meaning of “available now” is that: “*If the site had planning permission now there would be no other legal or physical impediment integral to the site that would prevent immediate development.*”<sup>12</sup> Thus, even under the previous iteration of Framework, a site should be excluded where it is occupied and in beneficial use.

100. The appellant accepts, in the light of the evidence, that sub-categories (a) and (b) are not capable of being “closed lists” in the sense that they provide exclusive categories of development. Nevertheless, they should be construed as extremely restrictive within which the deliverability test is to be applied.

#### *Cut off*

101. The base date for the assessment of the 5-year HLS is derived from the 2019 Housing Land Supply Annual Position Statement prepared by the LPA (CD 10.02). It is unfair of the Council to refer to subsequent grants of planning permission post the base date because if that exercise is undertaken, the whole of the evidence base needs to be re-visited both in terms of any additional requirement and lapsed planning permissions that have occurred post the Annual Monitoring Review (AMR) date. This was made clear in the appeal decision at Woolpit<sup>21</sup>, Suffolk (CD11.03) at Paragraphs 67 and 70.

#### *Resolutions to Grant*

102. A resolution to grant planning permission does not achieve an outline permission that would fall within category (b). It logically follows that an even higher threshold than category (b) would need to be demonstrated for these sites to be considered deliverable. In the Bures Hamlet appeal (CD11.08) the Inspector stated:

*“I agree that new planning permissions after the base date should be excluded and that would include permissions subject to a resolution to grant subject to a Section 106 obligation. Uncertainty about when such an obligation would be completed could put back a potential start date by months or even years. Information about significant new supply from such sources after the base date but before the annual assessment might nevertheless be material when considering the weight to be accorded to an identified shortfall in supply.... Sites that were subject only to a resolution to grant permission at the base date should be excluded.”*

103. The starting point should be that sites in the Council’s supply that amount to mere resolutions to approve should be excluded unless there is extremely compelling and robust evidence that planning permission can be expected.

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<sup>12</sup> Paragraph 34(ii).

### *Proposals contrary to the Development Plan*

104. The draft allocations and a number of sites in the Council's claimed supply are contrary to the policies in the development plan. As such they cannot be considered to be 'available now' or offer a 'suitable location for development now'

105. This was the view of the Inspector in the Braiswick<sup>4</sup> appeal. He was applying the more liberal 2012 Framework definition of 'deliverable' and was addressing the eLP that had at that point progressed to examination hearing without the 'soundness issue' having come to the surface.

106. The WB<sup>5</sup> appeal Inspector also excluded emerging allocations on the basis that they were not 'deliverable' within the meaning of the 2019 Framework. The current appeal should be consistent with this approach.

### Individual Sites

#### *Magdalen Street*

107. This has outline planning permission for 58 dwellings and detailed permission for 5 dwellings which have been built. No reserved matters application has been submitted and the deadline for submitting is October 2019. The outline scheme is not viable.

108. An alternative full planning application has been submitted for 120 dwellings but is not determined and is subject to objections. Any decision on this application would fall outside the 5-year HLS cut-off date.

#### *Fiveways Fruit Farm*

109. This is an allocated site and is subject to a current hybrid planning application. The full element relates only to the access. The application went to committee on 3rd May 2019 (post cut-off date) with a recommendation for approval and was approved subject to a s106 agreement including significant developer contributions but also with the caveat that the application could be refused if a s106 agreement is not signed within 6 months (6th August 2019 deadline). This site has not achieved a planning permission and the resolution post-dated the cut-off date. There is no clear evidence that the site will deliver in the next five years in the context of a submitted or prepared Reserved Matters Application.

#### *Former Essex County Hospital*

110. Whilst the site is within a 'predominantly residential area', this is not an allocation and the site is not listed in the Site Allocations DPD. No planning application has been formally submitted and any determination of this application would fall beyond the cut-off date of this 5-year HLS assessment. Furthermore, the site is complex with Listed Buildings and other constraints.

#### *University of Essex*

111. The site is an allocation in the DPD. The West Bergholt Inspector concluded that there was evidence that the site would deliver units in the next five years but did not conclude on the contribution to supply on the basis that it was not clear

what the conversion rate would be. The Inspector was not aware of the fact that the University of Essex have confirmed that they will be decommissioning one tower block containing 220-250 existing student apartments on campus each academic year for the next 6 years for refurbishment, which will clearly have a net reducing effect on the number of available units over the next 5-year period and beyond. Furthermore, the Inspector did not hear evidence on student housing needs. The university's ambitious plan indicates a significant level of planned student population growth over the next 5 years. It is cited in Appendix 6 of Mr Toft's evidence that the University will undergo its largest ever expansion in its history seeking to attract 4000 new students to the University over this period.

112. There is a current application for over 1,200 student units plus 58 studio flats units, which has been recently lodged. It is accepted that this would convert to 547 dwellings. Notwithstanding this, there is no precedent for this scale of growth on this site and this number of units is neither endorsed by the adopted Local Plan or the site's planning history. As such, it should be seen as a challenging application to determine.

*Land East of Hawkins Road*

113. The WB<sup>5</sup> Inspector considered that the site was deliverable. However, it had been presumed that the site was a housing allocation but it is not an allocation for housing. Within the Site Allocations DPD Policy SA EC6 Area 4 Hawkins Road states that housing areas will be encouraged to the west of Hawkins Road and development to the eastern side of Hawkins Road should continue to be a mix of commercial and industrial uses. Housing would be contrary to this policy. As such, it cannot be regarded as a housing allocation and residential development would be contrary to the development plan. Therefore, it is not a suitable location for development now.

114. It is subject to an undetermined outline planning application and if approved, it would be beyond the cut-off date and should be included in the Council's future 5-year HLS assessment.

*Britannia/St Runwalds Car Park*

115. This is an allocated site for 'low carbon' housing that is named in the Site Allocations DPD and is Council owned. No application has been submitted. There is no clear available evidence that completions will occur on this site.

*Garrison K1 Development*

116. The WB<sup>5</sup> Inspector rejected this site as meeting the Framework's definition of deliverable. The site was taken over by Peabody Housing Association in 2018. It is not the subject of a planning application. There has only been a recent pre-application enquiry submitted and this was post the cut-off date of the assessment.

*Military Road*

117. The WB<sup>5</sup> Inspector did not consider this site met the definition of deliverable. The site has no permission and is not allocated. An application has been

submitted. Even if approved, the site will only gain permission after the cut-off date.

*Creffield Road*

118. The WB<sup>5</sup> Inspector concluded that this site did not meet the definition of deliverable. It is not an allocation and not a site with planning permission at the time of the AMR. Planning permission was approved after the cut-off date.

*Wyvern Farm*

119. The WB<sup>5</sup> Inspector rejected this site as failing to meet the definition of deliverable. It is within the settlement boundary but currently an adopted employment allocation. The application was resolved to be approved at planning committee in June 2019. As such, it does not benefit from planning permission. The resolution was after the cut-off date.

*Mill Road*

120. The WB<sup>5</sup> Inspector rejected this site. It is contrary to the development plan as it is partially designated as open space and the remainder is designated as an employment zone. It was discounted at Braiswick<sup>4</sup> owing to the fact that it is contrary to the development plan. It is the subject of an undetermined hybrid planning application for a major mixed-use scheme. The outline element includes 300 homes. The application has outstanding objections and if it were to gain planning permission this would post-date the cut-off date and it would still need to get reserved matters approved.

*Gosbecks Phase 2*

121. The WB<sup>5</sup> Inspector rejected this site. It is contrary to development plan as it is outside of the settlement boundary. The application is subject to an objection from Natural England requesting a Stage 2 Habitats Regulations Assessment. It is the subject of an undetermined full planning application. It cannot therefore be considered to be suitable now. In any event, if it gained planning permission this would post-date the cut-off date.

*Chitts Hill*

122. The WB<sup>5</sup> Inspector rejected this site. An application was heard at the committee meeting on the 25<sup>th</sup> July 2019. The outcome was that the application has delegated authority to be approved by Officers subject to receiving amended access drawings and a signed s106 agreement. Planning permission would post date the cut-off date.

*Eight Ash Green*

123. The WB<sup>5</sup> Inspector rejected this site. In addition, it is contrary to development plan as it is outside of settlement boundary. The application for outline permission (with details of access) had not yet been taken to planning committee. Permission would post-date the cut-off date.

### The Appellant's Conclusions

124. The most important policies for determining the appeal are out of date.
125. The LPA's very best case is that there is a 5.1-year HLS with a surplus of 145 units above the minimum requirement. This is a marginal supply. Even a modest reduction in the deliverable supply results in the supply falling below the minimum 5-year HLS. On their own evidence the extent of the supply has fallen from that presented at West Bergholt<sup>5</sup> where they argued they had a supply of 5.3 years. Consistent with the decisions at Braiswick<sup>4</sup> and WB, both planning Inspectors have found that the LPA could not demonstrate a 5-year HLS. The supply on the Appellant's basis ranges from 3.5 years to 3.9 years and the shortfall is -1,702 to -1,250 units. The difference relates to how the University of Essex site is treated, depending on the refurbishment issue.
126. The tilted balance applies and planning permission should be granted as the adverse impacts of doing so would not significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

### **The Case for the Objectors who appeared at the Inquiry**

#### Tiptree Parish Council (IP 1)

127. The Neighbourhood Plan team has been undertaking work over a number of years. This has involved consultation with residents and interested parties through questionnaires and exhibitions. The eNP proposes land for 600 dwellings on sites chosen to avoid the need to travel through the village to get in and out of the sites. Tiptree does not have the infrastructure to cope with an additional 200 houses above the 600 planned for in the eNP.
128. The site is unsuitable because it is outside of the settlement boundary; the provision of public transport is insufficient to adequately serve the site; it would lead to problems with the highway network due to the additional traffic generated; and the sewerage infrastructure is already at capacity in the immediate vicinity of the site. Bus services from nearby railway stations would not run late enough to accommodate commuters coming home from London.
129. There is already a lot of traffic on the road and the road is unsuitable for heavy goods vehicles. There are signs on the road to confirm this. One is where Barbrook Lane joins Grove Road which reads "*Unsuitable for heavy goods vehicles*". There is a similar sign at the junction of Barbrook Lane with Maypole Road which reads "*No works traffic*".

Tiptree Neighbourhood Plan Steering Group (IP 2 and Closing on behalf of Tiptree Neighbourhood Planning Steering Group)

130. Hundreds of residents have been involved in the production of the eLP with some devoting a very substantial amount of time to it. Tiptree is a sustainable settlement suitable for growth but there are serious pressure points such as upon the health centre; water supply; sewerage; and access to dentists. The health centre has a high patient to doctor ratio and it is difficult to register with a dentist in the village. The proposed 600 dwellings is a sustainable growth rate that should not be exceeded as infrastructure improvements will not be able to keep up to meet demand for a higher growth rate. The 200 houses proposed represent a 33% increase of the total number of dwellings proposed in Tiptree over the next 15 years.
131. The additional dwellings, in addition to dwellings recently built, would add to traffic and car parking pressure in and around Tiptree. There is a strong desire to avoid increasing traffic on the main roads and junctions in Tiptree. The eNP has found ways to provide easy access to main routes (in particular the A12) and to spread traffic around Tiptree to provide alternative routes and avoid congestion. The proposed land allocation in the eNP is an obvious choice to fulfil these objectives and it would allow the provision of a new road connection at a future date. The allocation has had a very high degree of support from the community<sup>13</sup>. The Regulation 14 consultation exercise has also received a high level of community support. If this appeal is allowed, it would open the “flood gate” for the development of hundreds of other houses on the edge of Tiptree.
132. The appeal proposal would contribute little benefit to the community and has provoked a significant response from Tiptree residents opposed to the plans. It would cause significant traffic issues on a road that is unsuitable as a feeder road to a new estate due to its narrow width, lack of pavements, and the presence of Milldene Primary School, Milldene Nursery and Thurstable Secondary School which make it a busy area at the beginning and end of the school day.

Julie-Ann Harper on behalf of Barbrook Lane/Grove Road residents (IP 4)

133. The housing provided should be in accordance with the provisions of the eNP. Tiptree has already had much additional housing built and 500 houses were built on Grove Road metres away from the appeal site. It would be an overdevelopment of the area. There are already two other applications for large housing developments in Tiptree. There is not a shortage of sites in Tiptree. The proposal would set a dangerous precedent for development of other land nearby.
134. Grove Road and Barbrook Lane are narrow and cars cannot pass at certain points. The schools cause congestion. The pedestrian route for pupils leaving Thurstable School goes directly onto Barbrook Lane. Grove Road and Barbrook Lane are also part of a national cycling route. The bend on Grove Road/Barbrook Lane is dangerous and there are frequent accidents and near misses there. Public

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<sup>13</sup> eNP Objectives 12 and 14 CD 9.10 p14



transport serving the site is inadequate, for example, the busses to Colchester College are often so full that students are not able to get on and they have to wait for the next bus. In addition, there are no busses to the train station in Kelvedon.

135. The residents do not want another sewerage pump as residents already hear the noise from the current pumps. The sewerage system has been known to overflow and Grove Road is often waterlogged during rainy weather. There is also low water pressure in the area at certain times of the day. The proposal will harm wildlife on the site.

### **Written Representations**

136. Written representations were received from a great number of individuals, including from The Right Honourable Pritti Patel MP. The main points raised related to traffic congestion and safety, especially at school drop off and pick up; the capacity of the local infrastructure; inadequate sewerage systems in the area; low water pressure in the area; the development being contrary to adopted and emerging local planning policy; loss of ecology and wildlife on the site; noise and disturbance during construction and from the completed development; light pollution; air pollution; and that the development would set a precedent for other similar development on sites outside of the settlement boundary. Evidence of traffic congestion has been provided to me by way of photographs from objectors.

### **Conditions**

137. In the event that planning permission is granted the appellants and the Council have agreed a list of conditions which they would wish to see imposed on the planning permission. I attach at Annex 1 of this Report the conditions I recommend if permission is granted. My recommendation takes account of the agreement of the parties and the discussion at the Inquiry.
138. I have considered the conditions agreed between the parties in accordance with the Planning Practice Guidance. As well as the standard time limiting conditions (1 &2) it is necessary to define the plans in the interest of certainty (3). Details of site levels and earthworks are required in the interests of visual and residential amenity (4&5). Conditions are necessary in relation to trees and hedgerows in the interest of visual amenity (6-10). Conditions are necessary to secure the provision of open space (11) and to manage construction (21) in the interest of residential amenity. Conditions are necessary in relation to traffic calming (12); bus stop improvement; construction of the access and the provision of residential travel information packs (13) in the interests of sustainable transport choices and highway safety. Conditions in relation to surface water are necessary in the interests of sustainable drainage (14-16). Conditions in respect of contaminated land are necessary in the interests of health and safety (17-20). A condition is necessary in respect of acoustic mitigation in the interest of living conditions (22). An ecological scheme is necessary in the interest of bio-diversity (23). A condition is required to protect archaeological remains that might exist on the site (24). Conditions are necessary in relation to the provision of open space; the promotion of recreational routes in the area; and the provision of a pedestrian access to the public open space in order to protect the nearby protected sites (25&26).

## Planning Obligations

139. A S.106 agreement has been completed by the parties. The Council has provided a CIL Regulation Compliance Statement which sets out the policy basis for each of the covenants and their compliance with Regulation 122 of the CIL Regulations.

140. The key provisions of the covenants are:

- A contribution to record archaeological finds that might be disturbed by the development.
- Provision of community facilities by way of contributing towards the costs of rebuilding and re-equipping Tiptree Scout Hut. This will mitigate the impact on community facilities by the additional population.
- A financial contribution towards health care provision. This will mitigate the impact on local health care facilities by the additional population.
- A financial contribution for off-site sport and recreation provision. This will mitigate the impact on existing facilities by the additional population.
- Essex Coast RAMS financial contribution to mitigate effects on protected habitats.
- An education contribution in the form of a land transfer to the adjoining primary school as the additional population would add to the demand for places.
- A financial contribution in relation to a Traffic Regulation Order in respect of waiting restrictions at Barbrook Lane which are required to mitigate the additional traffic generated.
- The provision of 30% affordable housing. Out of 200 dwellings, 67 would be affordable. This is above the 20% required by adopted policy although 30% is required by the eLP.

141. I am satisfied that each of the covenants would be supported by policy and would meet the tests for obligations set by Regulation 122 and echoed by the Framework in that they would be necessary to make the development acceptable in planning terms, would be directly related to the development, and would be fairly and reasonably related to it in scale and kind. The obligations are therefore taken into account in support of the appeal proposal.

## Conclusions

### *Location*

142. The main considerations are set out in Paragraph 3 of this report.

143. The site is an undeveloped area behind dwellings on Barbrook Lane in Tiptree. CS policy SD1 identifies a settlement hierarchy as the Regional Centre, District Settlements and Rural Communities. It indicates that growth will be located at the most accessible and sustainable locations in accordance with the settlement hierarchy. It also says that the Council will seek to sustain the character and vitality of small towns, villages and the countryside and that development will be

expected to achieve compatibility with local character. Tiptree is classed as a District Settlement. However, the site is outside of, but adjoining, the settlement boundary of Tiptree and has no land use allocation in the Site Allocations DPD.

144. Policy SD1 is out of date in respect of its figures for the numbers of homes and jobs that should be delivered. It is also out of date by requiring a sequential approach that gives priority to previously developed land. However, I find no significant conflict with the Framework in respect of the settlement hierarchy and the protection of the character and vitality of small towns, villages and the countryside. CS Policy H1 indicates that the overall distribution of new housing will be guided by the Settlement Hierarchy and this is consistent with the Framework. As the site is outside of any settlement and is not an allocated housing site, it is not in a place where CS Policies SD1 and H1 encourage growth and therefore conflicts with these policies.
145. CS Policy ENV1 seeks to conserve and enhance Colchester's countryside. It says that unallocated greenfield land outside of settlement boundaries will be protected and where possible enhanced. This policy also seeks to strictly control development on such land. The Framework does not make a such a prohibitive requirement but says that planning policies and decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside<sup>14</sup>. However, whilst Policy ENV1 is somewhat more onerous than the requirement of the Framework, the broad aim of Policy ENV1 of protecting the character of the countryside is still relevant to this appeal.
146. Because the site is outside of a settlement boundary and in the countryside, the proposal is in conflict with the adopted CS Policies ENV1, H1 and SD1.

#### *Scale*

147. The proposed dwellings would result in some loss of the countryside which has intrinsic character and beauty. That said, the site is well screened by trees and surrounding development. Whilst there would be a change in the rural character of the site, these changes would have little visual impact upon the wider countryside due to the visually contained nature of the land and its location next to other built development. I therefore find that, although there would be some harm to the character and appearance of the countryside, this harm would be limited to the site itself and would not have a significant wider landscape impact. Therefore, the setting of Tiptree would not be harmed.
148. The proposal would obviously generate some traffic. At my visit, I saw the highway signs in relation to heavy goods vehicles and construction traffic. There is one where Barbrook Lane joins Grove Road which reads "*Unsuitable for heavy goods vehicles*". There is a similar sign at the junction of Barbrook Lane with Maypole Road which reads "*No works traffic*". However, I heard at the Inquiry that Barbrook Lane has a carriageway width which would allow an HGV and a car to pass in conformance with the street dimensions set out in *Manual for Streets'* (2007). It is likely that the signs are in place in relation to the narrow section of the carriageway where Barbrook Lane becomes Grove Road. I am satisfied that Barbrook Lane is wide enough to take the traffic associated with the scale of

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<sup>14</sup> Paragraph 170 of the Framework

development. In addition, the appellant has agreed to provide a financial contribution for a traffic calming measure at Barbrook Lane/Grove Road junction. This would make it less attractive to drivers to use the narrow Grove Lane and would ensure that speeds around the junction are low.

149. I appreciate that there are schools in the vicinity of the site and I have no reason to doubt the reports of neighbours that Barbrook Lane is very congested at school drop off and pick up times. I have also been provided with anecdotal evidence of "near misses" of accidents but I understand that there is no personal injury record for Barbrook Lane<sup>15</sup>. School drop off and pick up times are relatively short periods in the day and whilst the additional traffic from the appeal site would add to that congestion, I do not consider that it would materially harm highway safety.
150. Construction traffic is an inevitable consequence of any built development which can cause inconvenience to road users. However, it would not be permanent.
151. I have no technical evidence to substantiate the theory of interested parties that the development would materially add to traffic and car parking pressure in and around the centre of Tiptree. The submitted Transport Assessment found that the proposals would not give rise to any highway capacity or safety issues and advised that the predicted level of traffic can be accommodated onto the wider local highway network. The Local Highway Authority did not dispute this and whilst I heard the concerns of residents, I have no technical evidence to persuade me not to accept the findings of both the appellant and the LHA in respect of highway safety and traffic flow. I therefore find that the proposal would be acceptable in respect of highway matters.
152. Local residents also expressed their concern about the ability of public transport and other services in Tiptree to cope with the residents of the proposed dwellings, particularly as the eNP already proposes 600 additional dwellings.
153. In terms of public transport provision, I heard at the Inquiry from one party that the bus service from nearby railway stations would not run late enough to accommodate commuters coming home from London. However, the overall evidence I heard in relation to timetables suggests that there would be realistic options for getting to and from the site to London by public transport. I also heard from interested parties that public transport is generally poor in the area. However, whilst current public transport provision may not be perfect in relation to the expectations of local residents, the site is in a sustainable location in respect of its access to services by a choice of modes of transport because it is adjacent to a defined District Settlement.
154. I also heard that the health centre has a high patient to doctor ratio and that it is difficult to register with a dentist in the village. However, there has been no objection from the North East Essex Clinical Commissioning Group subject to a developer contribution to mitigate the impacts of the proposal.

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<sup>15</sup> Croft Transport Planning and Design submitted Transport Assessment with data from [www.crashmap.co.uk](http://www.crashmap.co.uk)

155. Comments have been made by interested parties about the adequacy of the sewerage system and water supply. That said, I have not been presented with any technical evidence in respect of the sewers or the water supply to substantiate these comments. Moreover, Anglian Water has confirmed that there is available capacity for wastewater and used water.
156. I conclude that the scale of the development would not harm or prejudice the provision of local services; highway safety and traffic flow; the living conditions of neighbours; drainage or water supply. The site is in a sustainable location with good access to employment and day to day services by a choice of transport modes.

### *Prematurity*

157. Paragraph 15 of the Framework says that the planning system should be genuinely plan-led. Succinct and up-to-date plans should provide a positive vision for the future of each area; a framework for addressing housing needs and other economic, social and environmental priorities; and a platform for local people to shape their surroundings.
158. The eLP identifies Tiptree as being planned for growth as a Sustainable Settlement in Policy SG1 of the eLP. Policy SG2 of the eLP indicates the distribution of housing and identifies Tiptree to contribute 600 houses during the plan period. This figure has been arrived at following discussions with the Tiptree Neighbourhood Plan Group which is progressing an emerging neighbourhood plan (eNP). Policy SS14 of the eLP states that the eNP will define the extent of a new settlement boundary for Tiptree and allocate specific sites for housing. It also says that proposals for development outside of the settlement boundary will not be supported. The eNP identifies sites for housing in a location which has been chosen to avoid an increase in traffic through the village and indicates the potential for a new connecting road.
159. The appeal site is not located within the eNP settlement boundary. Therefore, the proposal would be in conflict with eNP Policy TIP01 which seeks to control such development outside of the settlement boundary. Had the eNP been made, it would also conflict with eLP Policy SS14. That said, the figure of 600 houses is not a maximum. However, I have found that the scale of the proposal would not cause demonstrable harm to the settlement.
160. Paragraph 48 of the Framework advises that Local planning authorities may give weight to relevant policies in emerging plans according to their stage of preparation and the extent to which there are unresolved objections to relevant policies.
161. The eLP is subject of an Examination in Public (EIP). However, following the hearing sessions, the EIP Inspector has advised<sup>16</sup> the NEAs that the evidence provided to support the proposed Garden Communities is lacking in a number of respects and he has concerns over the viability and deliverability of the GCs.

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<sup>16</sup> Examination of the Strategic Section 1 Plan Advice on the Next Steps in the Examination: Letter to NEAs from Inspector dated 8 June 2018

These GCs are a central element in the Plan's special strategy for North Essex in respect of housing and employment provision and have the potential to provide for these needs not just in the current plan period but well beyond it. The examination has been paused as a result and the Inspector has advised the NEAs that they have 3 main options to address this matter. One would be to remove the GC proposals, a second is to carry out further work on the evidence base and sustainability appraisal and the third is to withdraw the Section 1 and 2 Plans from examination and resubmit them with revisions.

162. The Council has, in accordance with option two, carried out the additional work. However, this was out for public consultation until 30<sup>th</sup> September 2019 and is yet to be considered by the Inspector. After the strategic policies have been found sound it will then be necessary to examine Section 2 of the eLP separately. Whilst I heard that the Council is confident that the information will address the Inspector's concerns, the fact remains that the outcome is unknown and there is a significant issue with the progression of the spatial strategy in relation to housing provision. For this reason, I give very limited weight to policies relating to the distribution of housing in the eLP.
163. In the case of a neighbourhood plan, Paragraph 50 of the Framework advises that refusal of planning permission on grounds of prematurity will seldom be justified before the end of the local planning authority publicity period on the draft plan. Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how granting permission for the development concerned would prejudice the outcome of the plan-making process.
164. The eNP has completed the Regulation 14 stage. There needs to be a local authority consultation stage, an Independent Examination and a referendum. I recognise that a lot of work has been done by the local community to formulate the draft plan, however, it is not sufficiently advanced enough for me to attach more than limited weight to it, especially given the great uncertainty over the housing provision advanced by the eLP.
165. The Framework<sup>17</sup> advises that arguments that an application is premature are unlikely to justify a refusal of planning permission other than in the limited circumstances where both: a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan; and b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area. Given my findings above, I consider that dismissing the appeal on prematurity is not justified and would be contrary to the provisions of the Framework.
166. I have had regard to the appeal decision<sup>18</sup> in Hambrook, West Sussex. However, that concerned a completely different type of settlement in another geographical area. Therefore, the comments<sup>19</sup> of the Inspector in respect of the plan-led system have been made within a different context to the circumstances

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<sup>17</sup> Paragraph 49

<sup>18</sup> APP/L3815/W/15/3004052

<sup>19</sup> IR 126

of the appeal before me so I do not find the Hambrook case to be directly comparable to this current proposal. I have also had regard to the Inspector's comments in the West Bergholt appeal<sup>20</sup>. Again, WB<sup>5</sup> is a different type of settlement as it lower down in the hierarchy. Moreover, the NP in that village had been subject to examination. In this respect, the findings of the WB Inspector are not directly relevant to this appeal.

### *Housing Land Supply*

167. The parties disagree about whether or not Colchester can demonstrate an up to date 5-year HLS. It is agreed that for the purposes of this appeal, the 5-year HLS should be assessed for the period 1 April 2019 to 31 March 2024 and the Council's published 2019 HLS Position Statement (HLSPS) covers the above period. It is agreed that the Standard Method is used to calculate local housing need and that this produces a minimum local housing need for some 1086 per annum in the Colchester borough and by applying a 5% buffer, a 5-year requirement of 5701 dwellings. The HLS Statement of Common Ground<sup>21</sup> indicates that the Council claims there is 5.13 years supply and the appellant claims there is 3.66 years.
168. It is a matter of dispute between the two parties as to whether the definition of "Deliverable" in the glossary of the Framework comprises an essentially closed list and both parties have drawn my attention to the *St Modwen* judgement and to a number of appeal decisions<sup>22</sup> with differing conclusions on this matter. In my mind, the words "in particular" denote particular examples. There is nothing in the Framework that confirms that the list is closed and therefore I do not read it to be so. The *St Modwen* judgement is therefore still relevant. It is clear from the glossary definition that for sites to be considered deliverable, they should be available now, offer a suitable location for development now and be achievable with a realistic prospect that housing will be delivered on the site within five years.
169. In respect of Category B type sites, the glossary says that such sites should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years. The Planning Practice Guidance<sup>23</sup> sets out what further evidence "may include". Therefore, the list of evidence in the PPG is not exhaustive either.
170. I am of the general view that if a site is unallocated in an adopted development plan, but included in the latest housing trajectory, then it should not automatically be disregarded if permission is granted after the "base date" as the risk of "skewing" the housing figures would be minimal. This is especially so in Colchester where permissions do not tend to lapse.
171. I now turn to consider the sites which were disputed by the parties. These were discussed at a round-table session (RTS) of the Inquiry. Apart from Avon Way House, the appellant argued that the following sites would deliver 0 houses. The numbers in brackets represent the Council's claimed supply.

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<sup>20</sup> APP/A1530/W/18/3207626

<sup>21</sup> Version 7 30 August 2019

<sup>22</sup> Including APP/C1950/W/17/3190821; APP/Z1510/W/18/3207509

<sup>23</sup> Paragraph:007 Reference ID 68-007-20190722

*Avon Way House (62)*

172. It was agreed at the RTS by both parties that this site can deliver 62 dwellings.

*Land North of Magdalen Street (72)*

173. This has outline planning permission for 58 dwellings and detailed permission for 5 dwellings which have been built. No reserved matters application has been submitted and the deadline for submitting was October 2019. I heard that the outline scheme is not viable.

174. The principle of residential development is established by this currently extant permission and there is a detailed application under consideration for 120 dwellings. The Council says that it has officer support and is likely to be heard by committee in September/October of this year. The site is part of a wider scheme of development and an access road has already been constructed which can be used for the application proposal. I appreciate that the detailed proposal has many more units than approved by the outline permission. However, I heard that the units proposed are smaller than those approved and therefore the overall scale would not be much greater than already approved. There is no policy limit on the numbers to be provided by the site, it is brownfield land, site assessment work has been undertaken and the applicants own the site.

175. I consider that the evidence provided by the Council demonstrates that there is a realistic prospect that 72 units will be delivered on the site within five years.

*Fiveways Fruit Farm (250)*

176. This is an adopted allocation. A hybrid planning application for the 250 dwellings has a resolution to grant subject to a S.106 agreement. I heard from the Council that substantial progress has been made with the S.106.

177. The two developers of this site have a good track record of delivery in Colchester and one of them, Mersea Homes, is already working on a smaller site on the other side of the road. Mersea Homes have confirmed to the Council that they have secured the site via an Option Agreement with a single owner; that they expect to immediately prepare reserved matters after planning permission is granted; site set up is anticipated to start in 2020 with the first completions to be ready by 2021; and that it is anticipated that there will be 100 completions per annum.

178. For these reasons I consider that the 250 homes are deliverable.

*Essex County Hospital (118)*

179. This site does not have an allocation in the development plan, there is no planning permission for the dwellings and no planning application had been submitted at the time of the Inquiry. I understand that the Council has been discussing the site for over 3 years; a detailed masterplan has been prepared; the site is subject of a Planning Performance Agreement<sup>24</sup>, and it is within a residential area. However, I heard that there are issues in respect of affordable housing provision and the site also involves a Listed Building. Both of these

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<sup>24</sup> C5



matters have the potential to add complexity, delay and issues of viability. I am not persuaded that there is a realistic prospect that the site will be developed within the 5 years. I therefore discount this site from the HLS.

*Creffield Road (7)*

180. This is a non-allocated site but is in the eLP housing trajectory. The Inspector in WB<sup>5</sup> discounted this site but Planning permission has been granted since that decision. It is therefore deliverable.

*University of Essex (547)*

181. This has a development plan allocation. There is a current application under consideration which the parties agree works out to represent 547 dwellings after the student conversion rate is applied. The land has already been subject to flood mitigation land raise in anticipation of the development and it is protected by the Colne tidal barrier. I have no good reason to believe that the issue of flooding would prevent deliverability.

182. I heard at the Inquiry that there are no serious archaeology or ecology constraints. I also heard that the Council prefer student homes to be on campus and that the University usually delivers housing quickly.

183. I do not accept the appellant's argument that the number of deliverable units should be reduced due to the university taking other dwellings out of use for a temporary period for refurbishment. Neither do I give much weight to the university's expansion plans as these are not part of assessing need in the SM. It is the longer-term supply that is relevant. Firm progress has been made with this site so I include 547 dwellings in the HLS.

*Land East of Hawkins Road (115)*

184. This site is not allocated for housing in the LP but is allocated for business use. It is included in the latest trajectory. I heard that employment use is not viable on the site; there is already student accommodation on this road and there is demand for student accommodation in the area.

185. An application for 282 rooms was being considered at the time of the Inquiry which the Council claim would equate to 115 dwellings to be added to the HLS. It had officer support and the only objection from interested parties related to car parking but the Council were confident that this objection could be overcome. This application remained, at the time of the Inquiry, undetermined since the WB appeal which indicates some kind of delay and it is contrary to the development plan. Overall, the evidence is not robust enough to persuade me that there is a realistic prospect that housing will be delivered on the site within 5 years.

*Britannia Car Park/Runwalds Street (55)*

186. This site is allocated for low carbon housing. No application has been submitted but it is at an advanced stage of preparation which includes full detailed drawings and structural calculations. The site is owned by the Council and would be developed by the Council's own "arm's length"<sup>25</sup> development company, Amphora Homes, which has set out a timetable for development in the Amphora

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<sup>25</sup> Para 3.28, P10 Sean Toft Rebuttal

Homes Business Plan approved by the Council. This shows that a full application would be submitted in November, condition discharge by April 2020 and completion by the end of 2022. There is no other residential development that would look onto it so an application is unlikely to raise objections in respect of living conditions. Therefore, I consider that the 55 homes are deliverable.

*Garrison K1 (25)*

187. This site is allocated in the development plan for residential growth. A major housing association owns the site and it is part of a wider site which has been built out. The disputed part of the site does not have planning permission but a preliminary enquiry has been submitted. The Council say that the agents are keen to submit a planning application. However, I am unconvinced that firm progress has been made in respect of the application. Clear evidence has not been demonstrated in respect of deliverability within five years. I therefore do not include this site in the supply.

*Military Road (8)*

188. No residential planning permission exists for this site and it is not allocated in the development plan. The Council argue that it has been included within the housing trajectory as a specific site for several years. The site has no ownership constraints as it is owned by the Council; it is brownfield and has been cleared ready for development. A planning application with a recommendation for approval was due to be heard at the 26 September 2019 Planning Committee. At the time of the Inquiry it was undetermined and therefore I do not include it in the supply.

*Wyvern Farm Phase Two (100)*

189. This site is allocated for employment use in the LP but proposed as a residential allocation in the eLP. A detailed application for residential development has gained a resolution for approval but at the time of the current Inquiry it was waiting for a S.106 agreement to be signed. S.106 agreements can take time to resolve but they do not generally take years. This particular site is part of a larger scheme which has been built out by a major housebuilding company and it is logical that the development will be carried forward onto this part of the site. I therefore consider this site to be deliverable.

*Mill Road (150)*

190. This is an allocation in an emerging Eight Ash Green Neighbourhood Plan and is subject to a current hybrid application for 650 dwellings. The residential element of the application is in outline. It is Council owned and a delivery timetable was submitted with the Council's evidence. However, it is not an adopted allocation and at the time of the Inquiry did not have any planning permission. I do not have the clear evidence that this can be delivered in the 5 years.

### *Gosbecks Phase Two (150)*

191. This is an emerging allocation and a full planning application is under consideration. There is a Planning Performance Agreement and a timetable of delivery from the developer who has a good track record of delivery. However, at the time of the Inquiry there was no current allocation or planning permission, the site is outside of the existing settlement boundary and therefore contrary to the adopted development plan and there are objections to the planning application. Therefore, I discount the site.

### *Chits Hill (100)*

192. The site is an emerging allocation in the eLP. There is a resolution to grant subject to access issues being resolved and the completion of a S.106 agreement. The applicants are already on site doing some pre-commencement work. I consider that there is a realistic prospect that this site can deliver 100 homes within the timescale.

### *Eight Ash Green (150)*

193. This is an allocation in an eNP. However, there is no existing allocation and there is no planning permission although an outline application was under consideration at the time of the Inquiry. In my view, the scheme is not progressed enough to persuade me that it has a realistic prospect of delivery in the five-year period so I discount this site.

### Conclusion in relation to HLS

194. The above sites would add about 1193 dwellings to the supply. This needs to be added to the undisputed supply from other named sites (3361) and the windfall allowance (578). This would give a HLS of around 5132 dwellings. The required supply is 5701 so the shortfall is roughly 569 units equating to a supply of about 4.7 years. This is a small shortfall.

### **Other Matters**

#### *Habitats*

195. There is no dispute between the parties in relation to this matter. However, I must consider this appeal under the Part 6 of the Conservation of Habitats and Species Regulations 2017. Therefore, I have had regard to the Information Habitats Regulations Assessment (IHRA) which was submitted by the appellant as part of the appeal documentation.

196. The appeal scheme proposes up to 200 dwellings on a site within an identified Zone of Influence (ZoI) of a number of European / internationally designated sites. These are Essex Estuaries Special Area of Conservation (SAC), Blackwater Estuary Special Protection Area (SPA) / Ramsar Site, and Abberton Reservoir SPA / Ramsar site. The site is also technically within the ZoI for the Dengie SPA / Ramsar site but this site is separated from the appeal site by the Blackwater Estuary which forms a significant barrier to access and residents would need to travel over 40km by road to get to it so detailed consideration has not been afforded to this latter SPA.

197. The Abberton Reservoir SPA and Ramsar and the Blackwater Estuary SPA support birds. The Blackwater Estuary Ramsar site supports saltmarsh habitat, rare invertebrate fauna and wintering winterfowl. The Essex Estuaries SAC is designated for its Atlantic salt meadows, estuaries, Mediterranean and thermo-Atlantic halophilous scrubs, sandbanks, and mudflats and sandflats with plant colonies.
198. Up to 200 dwellings is likely to result in approximately 480 new people based on an average of 2.3 people per household. The shortest distance from the application site to the boundary of the sites is approximately 7km and about 10km to suitable car parking areas. Visitors would need to access the sites to have an effect. Given the above, it is unlikely that new residents would visit the sites in significant numbers on a regular basis. It is therefore unlikely that habitats would be damaged or degraded by the new residents. Furthermore, the key habitats for the qualifying species include open water (Abberton Reservoir) or estuarine habitats (Blackwater Estuary) which are generally inaccessible for walkers.
199. On this basis, the development would not be likely to have a significant effect on the protected sites. However, taking a precautionary stance, in the absence of avoidance or mitigation measures, there is some potential for the development proposals to contribute towards a significant effect on Blackwater Estuary SPA / Ramsar site via potential disturbance effects, and Essex Estuaries SAC via physical damage and degradation, when considered in combination with other plans and projects, and therefore an appropriate assessment is required.
200. The proposed development would deliver informal recreational opportunities for new residents in the form of a network of open spaces, including an off-lead area for dogs. This will maximise "on the doorstep" opportunities for new and existing residents and provide mitigation.
201. The draft Essex Coast Recreational disturbance Avoidance and Mitigation Strategy Supplementary Planning Document 2019 (RAMS SPD) (CD sets out detailed mitigation measures that would be funded by S106 contributions at a specified tariff per dwelling. They include a range of habitat-based measures such as wardens, access management, monitoring and communication.
202. A signed planning obligation secures the payment of the contributions which are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development, and in accordance with Regulation 122 of the CIL Regulations.
203. Natural England has provided written confirmation that it would raise no objection to the proposed mitigation package and the broad conclusions of the IHRA. Consequently, I am satisfied that the proposed development would not adversely affect the protected sites.

*Ecology of the site itself*

204. I have had regard to the Ecological Impact Assessment<sup>26</sup> submitted by the appellant. The site is dominated by semi-improved grassland fields, much of which are categorised and "poor". There are some hedgerows, lines of trees,

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<sup>26</sup> CSA Environmental, August 2018

orchards, ponds and streams but the majority of the site is of limited ecological interest. However, foraging and commuting bats, foraging badgers, numerous breeding birds and reptiles use the site. Mitigation measures are proposed to address potential impacts so that there would be no overall harm to wildlife and these can be secured by conditions. These are detailed in the EIA and include boundary planting, nectar-rich grassland creation, community orchard creation, provision of new bird and bat roosting features and creation of wetland SUDs features.

### **Planning Balance**

205. The Council cannot demonstrate an up to date 5-year HLS and for this reason, along with the reasons explained in Paragraph 147, the most relevant policies for housing, i.e., CS Policies SD1 and H1, are not up to date and I therefore attach only some weight to these policies. Furthermore, CS Policy ENV1, as discussed in Paragraph 148, is inconsistent with the Framework and is also out of date but I attach moderate weight to this policy in so far as recognising the intrinsic character and beauty of the countryside. In these circumstances, I must consider the proposal against Paragraph 11 (d) of the Framework which directs that 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. The "tilted balance" applies.
206. The Framework outlines the overarching interdependent objectives for planning to achieve sustainable development: social, economic and environmental.
207. The main social benefit would lie in the provision of up to 200 additional dwellings in a location which would provide new residents with a choice of modes of travel. The dwellings would go a significant way to meeting the Council's current undersupply of housing land. Furthermore, the provision of 30% affordable housing, within the context of an agreed continuing unmet need, would be a substantial benefit.
208. Modest social benefits would also arise from the provision of informal public open space for local residents. There would also be some minor economic benefits in respect of the construction of the dwellings and the contribution that new residents would make to local shops and services.
209. The only demonstrable harm I have identified would be a loss of open countryside. However, this harm is limited by the physically enclosed nature of the site. Even though the HLS shortfall is small, the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole. The benefits outweigh the harm.
210. I note the Council's and interested parties concern about precedent. There were numerous other sites surrounding the settlement that developers showed an interest in during the call for sites during the eNP consultations. However, the issue of scale and any other associated harm, including that of a cumulative impact over and above development that has already been permitted, is a matter that can be considered in any future development proposals. As I have concluded

that the proposal would be acceptable on its own particular merits, I see no reason why it would lead to harmful developments on other sites in the area.

**Recommendation**

211. The policies which are most important for determining the appeal are out-of-date. The adverse impacts of allowing the appeal would not significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole. I therefore recommend that the appeal is allowed in accordance with the conditions.

*Siobhan Watson*

INSPECTOR

## **APPEARANCES**

### **FOR THE COUNCIL (CBC)**

Mr Simon Pickles of Counsel, Instructed by Karen Syrett, Place and Housing Manager, CBC

He called

Sean Tofts MSc, Associate RTPI, Planning Policy Officer CBC  
Laura Chase BA, MA, PhD, MRTPI Planning Policy Manager CBC  
Eleanor Moss BSc(Hons), MSc, Senior Planning Officer CBC

In addition, at the roundtable discussion:

Simon Cairns BA(Hons) Dip TP, Dip BBC, MRTPI, IHBC, Development Manager CBC

### **FOR THE APPELLANT**

John Barrett of Counsel, Instructed by Richard Lomas, Gladman Developments Ltd

He called

Phil Wooliscroft, Croft Transport Planning and Design  
Sebastian Tibenham, MRTPI, MiED, MTCP, Pegasus Group  
Richard Lomas, BSc (Hons) DipTP, MRTPI, Planning Manager, Gladman Developments Ltd

### **INTERESTED PERSONS**

Colin Bigg, Chairman, Tiptree Parish Council Planning Committee  
Jonathan Greenwood, Chairman Tiptree Neighbourhood Planning Steering Group  
Julie-Ann Harper, on behalf of local residents

## DOCUMENTS SUBMITTED AT THE INQUIRY

Amended signed Statement of Common Ground

List of agreed suggested conditions

Opening on behalf of the appellant

Opening on behalf of the Council

Closing on behalf of the appellant

Closing on behalf of the Council

Closing on behalf of Tiptree Neighbourhood Planning Steering Group

APP 1 – Planning & Economic Statement Meadows 3 University of Essex, The JTS Partnership LLP, August 2019

APP 2 – Additional Table Produced by Sebastian Tibenham 2014 Household Projection Data (20 year and 10 year projections by Household Age Group Representative)

APP 3 – extract from Birmingham Plan 2031, January 2017

C1 – Letter to The Planning Inspectorate re APP/A1530/W/18/3207626 from CBC dated 29 August 2019

C2 – Emails between CBC and Jackson and Co Property Services in respect of student accommodation

C3 – emails between CBC and Pegasus in respect of Gosbecks

C4 Emails between CBC and JTS Partnership LLP in respect of Flooding

C5 Planning Performance Agreement between CBC and Essex Housing

C6 – K1 Garrison location plan

C7 – Correspondence from Planning Policy Officer re- Hawkins Road site, April 2019

C8 – Land use plan

C9 – Planning obligation summary

C10 – CIL Compliance Schedule

IP1 – Objection Letter

IP2 – Summary of objections by Tiptree Parish Council

IP3 - Summary of objections by Tiptree Neighbourhood Plan Steering Group

IP4 – Submission by Julie-Ann Harper on behalf of the Barbrook Land/Grove Road residents.



### **Annex 1 – Schedule of Conditions**

- 1) Details of the appearance, landscaping, layout and scale (hereinafter called “the reserved matters”) shall be submitted to and approved in writing by the Local Planning Authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority no later than the expiration of three years beginning with the date of the grant of this outline permission; and the development to which this permission relates must be begun no later than the expiration of two years from the date of approval of the last of the reserved matters to be approved.
- 3) The development hereby permitted shall be carried out in complete accordance with the following plans: Site Location Plan ref CSA/3725/111 and the Access Plan ref 2179-F01 Rev B.
- 4) The reserved matters application(s) shall include detailed scale drawings by cross section and elevation that show the development in relation to adjacent property, and illustrating the existing and proposed levels of the site, finished floor levels and identifying all areas of cut or fill. The development shall thereafter be completed in accordance with the agreed scheme before development is first occupied.
- 5) No works shall take place until details of all earthworks have been submitted to and agreed, in writing, by the Local Planning authority. These details shall include the proposed grading and mounding of land areas including the levels and contours to be formed, showing the relationship of proposed mounding to existing vegetation and surrounding landform. The development shall thereafter be carried out in accordance with the approved details.
- 6) No works shall take place until all trees, shrubs and other natural features not scheduled for removal on the approved plans have been safeguarded behind protective fencing to a standard that will have previously been submitted to and agreed, in writing, by the Local Planning Authority. All agreed protective fencing shall thereafter be maintained during the course of all works on site and no access, works or placement of materials or soil shall take place within the protected areas without prior written consent from the Local Planning Authority.
- 7) No burning or storage of materials shall take place where damage could be caused to any tree, shrub or other natural feature to be retained on the site or on adjoining land.
- 8) All existing trees and hedgerows shall be retained throughout the development construction phases, unless shown to be removed on the approved drawing and all trees and hedgerows on and immediately adjoining the site shall be protected from damage as a result of works on site. All existing trees and hedgerows shall then be monitored and recorded for at least five years following contractual practical completion of the development. In the event that any trees and/or hedgerows die, are removed, destroyed, or fail to thrive during this period, they shall be replaced during the first planting season thereafter to specifications agreed, in writing, with the Local Planning Authority. Any tree works agreed to shall be carried out in accordance with BS 3998.

- 9) No works or development shall be carried out until and Arboricultural Implications Assessment, Arboricultural Method Statement and Tree Protection Plan in accordance with BS 5837, have been submitted to and approved, in writing, but the Local Planning Authority (LPA). This shall be carried out in accordance with the submitted Tree Survey and Arboricultural Impact Assessment referenced CSA/3725/04 dated January 2019. Unless otherwise agreed, the details shall include the retention of an Arboricultural Consultant to monitor and periodically report to the LPA, the status of all tree works, tree protection measures, and any other arboricultural issues arising during the course of development. The development shall then be carried out strictly in accordance with the approved method statement.
- 10) During all construction work carried out underneath the canopies of any trees on the site, including the provision of services, any excavation shall only be undertaken by hand. All tree roots exceeding 5 cum in diameter shall be retained and any pipes and cables shall be inserted under the roots.
- 11) At least 3.24 hectares of land within the redline boundary shall be laid out for use as amenity open space in accordance with a scheme (including phasing) which shall be submitted to and agreed, in writing, by the Local Planning Authority before the development commences. The space shall be made available for use within 12 months of the occupation of the first dwelling and thereafter it shall be retained for public use.
- 12) Prior to commencement of the development, details of a scheme of traffic management works at the Barbrook Lane/Grove Road junction shall be submitted to and approved in writing by the Local Planning Authority. The agreed works shall be implemented in full in accordance with the approved details prior to the first occupation of any dwelling hereby approved.
- 13) No occupation of the development shall take place until the following have been provided or completed:
  - a. A priority junction off Barbrook Lane to provide access to the appeal site as shown in principle on the drawing hereby approved.
  - b. Upgrade to two bus stops before any dwelling is first occupied. The details of the upgrade shall be submitted to and approved in writing prior to the occupation of any dwelling.
  - c. Residential travel information packs as prior approved by the local planning authority. The information packs shall be provided to each dwelling before they are occupied.
- 14) No works shall take place until a detailed surface water drainage scheme for the site has been submitted to and approved in writing by the Local Planning Authority based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development. The scheme shall include but not be limited to:
  - a. Limiting discharge rates from the site to the 1 in 1 year greenfield run-off rate or as close as is reasonably practicable for the 1 in 1 year and 1 in 100 year rainfall events;

- b. Provide sufficient surface water storage so that the runoff volume is discharged or infiltrating at a rate that does not adversely affect flood risk and that unless designated to floor that no part of the site floods for a 1 in 30 year event, and 1 in 100 year event in any part of a building or utility plant within the development;
- c. Provide sufficient storage to ensure no off-site flooding as result of the development during all storm events up to and including the 1 in 100 year plus climate change event;
- d. Provide details of pre and post 100 year, 6 hour runoff volume;
- e. Provision of suitable "urban creep" allowance;
- f. Final modelling and calculations for all areas of the drainage system;
- g. The appropriate level of treatment for all runoff leaving the site, in line with the CIRIA SuDS Manual C753;
- h. Detailed engineering drawings of each component of the drainage scheme;
- i. A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features;
- j. A written report summarising the final strategy and highlighting any minor changes to the approved strategy;
- k. A scheme to minimise the risk of offsite flooding during the construction works.

The approved scheme shall subsequently be implemented prior to occupation of the first dwelling.

- 15) No works shall take place until a Maintenance Plan detailing the maintenance arrangements including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, has been submitted to and agreed, in writing, by the Local Planning Authority. Should any part be maintainable by a maintenance company, details of long term funding arrangement shall be provided.
- 16) The applicant or any successor in title must maintain yearly logs of maintenance which should be carried out in accordance with any approved Maintenance Plan. These must be available for inspection upon request by the Local Planning Authority.
- 17) No development shall take place until an investigation and risk assessment, in addition to any assessment provided with the planning application, has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the prior written approval of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings shall be submitted to and approved in writing by the Local Planning Authority before the commencement of development. The report and findings shall include:

- a. A survey of the extent, scale and nature of contamination, including contamination by soil, gas and asbestos;
  - b. An assessment of the potential risks to, human health; property, crops, livestock, pets, woodland and service lines and pipes; adjoining land; groundwaters and surface waters; and ecological systems.
  - c. An appraisal of remedial options and proposal of the preferred option(s).
  - d. The above shall be conducted in accordance with DEFRA and the Environment Agency's *Model Procedures for the Management of Land Contamination CLR11* and the Essex Contaminated Land Consortium's *Land Affected by Contamination: Technical Guidance for Applicants and Developers*.
- 18) No works shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, the natural environment has been submitted to and agreed in writing by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
- 19) No development shall place until the remediation scheme is carried out in accordance with the approved details. The Local Planning authority shall be given two weeks written notification of commencement of the remediation works. Following completion of the remediation works a verification/validation report that demonstrate the effectiveness of the remediation carried out must be produced and approved in writing by the Local Planning Authority before any dwelling is constructed.
- 20) In the event that contamination not previously identified, is found at any time when carrying out the approved development, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with Conditions 17-19.
- 21) No development shall take place until a Construction Method Statement has been submitted to and approved in writing, by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period and shall provide details for:
- a. The parking of vehicles of site operatives and visitors;
  - b. Hours of deliveries and hours of work;
  - c. Loading and unloading of plant and materials;
  - d. Storage of plant and materials;
  - e. The erection and maintenance of security hoardings;
  - f. Wheel washing facilities;
  - g. Measures to control the emission of dust and dirt during construction; and

- h. A scheme for recycling/disposing of waste resulting from demolition and construction.
- 22) The reserved matters application(s) shall include a detailed acoustic assessment and mitigation report. The report shall have been undertaken by a competent person and provide details of the noise exposure at the façade of the residential dwellings; internal noise levels in habitable rooms and noise levels in all associated amenity spaces. The design and layout shall avoid, as far as practicable, exposure of habitable rooms to noise levels that exceed the following: NPR – 60dB LAeq 16 hours (daytime outside); 55dB LAeq 8 hours (night outside)
- 23) The reserved matters application(s) shall include a Biodiversity Method Statement, a Construction Environmental Management Plan, a 5-10 year Management Plan and a scheme of biodiversity and habitat retention, mitigation (including a detailed lighting scheme), protection and enhancement, including an implementation timetable, to include but not be limited to the details set out in the Ecological Reports submitted with the application. The development shall thereafter be carried out in accordance with the agreed details.
- 24) No development shall take place until a Written Scheme of Investigation of archaeological remains shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions - and:
- a. The programme and methodology of site investigation and recording;
  - b. The programme for post investigation assessment;
  - c. The provision to be made for analysis of the site investigation and recording;
  - d. The provision to be made for publication and dissemination of the analysis and records of the site investigation;
  - e. The provision to be made for archive deposition of the analysis and records of the site investigation;
  - f. The nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.
- 25) No development shall commence until a detailed mitigation and avoidance scheme for the Essex Coast European sites is submitted to and approved in writing by the Local Planning Authority (in consultation with Natural England). It will include:
- a. Final details of the enhancements to on-site open space, including the provision of an off-lead dog area, dog bins, pedestrian connection to Grove Road and an interpretation board and
  - b. A scheme for the promotion of alternative informal recreational routes in the local area including details of an information pack to be supplied to all new residents.
- 26) The reserved matters application(s) shall include details of a scheme to facilitate pedestrian access to the northern redline boundary of the site.



# Ministry of Housing, Communities & Local Government

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## RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### SECTION 2: ENFORCEMENT APPEALS

#### Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.