

**BlueSquare Homes Limited**

**Section 78 of the Town and Country Planning Act 1990**

**Public Inquiry – 22 February – 4 March 2022**

**Land at 102 East Road, West Mersea, Colchester, Essex**

**APP/A1530/W/21/3285769**

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**OPENING STATEMENT OF THE APPELLANT**

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INTRODUCTION

1. This appeal presents an excellent opportunity to address the chronic shortage of homes on the popular island of West Mersea in Essex.
2. This planning appeal by way of Section 78 of the Town and Country Planning Act 1990 seeks the grant of outline planning permission for 56 homes (30% affordable), the application for which submitted by the Appellant to the LPA – Colchester Borough Council – and refused in April 2021.
3. The site lies on the east side of the town of West Mersea, an attractive and desirable settlement on Mersea Island, in the Blackwater and Colne estuary. The appeal proposal is an outline application for 56 dwellings (of which 30% will be affordable), landscaping and access from East Road and demolition of the existing dwelling on site. The appeal site lies on the edge of the town, and is undesignated in terms of landscape and ecology.
4. Of currently undeveloped sites in West Mersea, the appeal site is undoubtedly the most suitable for new homes.

5. Opposition to the scheme has entirely overlooked the many benefits the development will bring about.
6. The amount of harm that residential development here is said to bring about is minimal as shown by the inherent weakness of the LPA's case relating to landscape, heritage, design and density, and highways. When viewed dispassionately, these concerns are not weighty and meaningful grounds of objection but makeweights in seeking to justify the refusal:
  - (i) Landscape concerns boil down to one view from a public right of way which already has strong views of other development nearby, and anyway will be comprehensively screened by existing and new planting;
  - (ii) The heritage concerns revolve around the effect on setting by a slight change of the view across a pub car park and other assorted existing buildings;
  - (iii) Design and density complaints are simply not substantiated by the Council's evidence, and the scheme is less dense than a recent nearby scheme which is demonstrably not a cramped development (Wellhouse Avenue); and
  - (iv) In relation to access/highways, two entirely acceptable solutions are possible and presented, one of which would result in betterment to the local highways network.
7. As you will hear from Mr Maxwell the Appellant takes the view that on a fair and objective planning balance the proposal should receive planning permission, whether or not the tilted balance is engaged.
8. If, as we submit the tilted balance *is* engaged in this case, then the LPA must show the alleged impacts significantly and demonstrably outweigh the benefits of the proposal. This is a heavy and onerous burden which the evidence will show does not come close to being passed on a fair and objective analysis of the evidence.

### *General matters*

9. The Government's overarching aim for the planning system is to see a significant boost to the supply of housing. The Council has a sizeable annual housing requirement of 920 houses every single year. The sites the Council rely on to provide that figure over the next five years do not stack up: there is therefore a shortfall. Whilst LPAs are required by the government to demonstrate five years supply as a bare minimum, the Council cannot currently demonstrate this. The shortfall is significant and needs to be addressed immediately, not in the future.
10. Providing housing brings benefits to many.
11. The planning system often hears from those who have – rather than from those who have *not* – got homes. This is an authority with an acute need for both market and affordable homes.
12. Seeking to provide new homes for people to live in is not evil or wrong or harmful but seeks to meet a fundamental human aspiration for human contentment and security.
13. Most of us benefit from that contentment and security and take it for granted but the truth is that this country in the past 30 years has completely failed to provide enough homes for people to live in with the consequence that there are now major issues of affordability and availability and the provision of housing mainly for the young and those on a lower income. Two groups which should be looked after in any decent society.
14. As a result of that failure the Government signalled a sea change in policy with the publication of the NPPF in March 2012 which sought a significant boost to the supply of housing. That has only been reiterated with greater urgency in the subsequent iterations of the NPPF.
15. Therefore it is clear that the overarching planning policy aspiration is to build significantly more homes, with the Government estimating a requirement of 300,000 units per annum of which Colchester's contribution is 920.

16. At the outset there are six key points:

- (i) The LPA has a desperate need for housing which needs to be addressed now.
- (ii) This proposal will make a meaningful and important contribution to the housing shortfall.
- (iii) There is a desperate and immediate need to provide more housing. If that need is not met, the most significant consequences will be felt by those who need housing.
- (iv) Since the financial crisis, the Council have under-delivered and built up a backlog.
- (v) The NPPF readily acknowledges that windfall sites such as this can come forward to meet housing need.
- (vi) The site is highly sustainable, and equal in landscape terms to nearby recently allocated sites. Because of its suitability it is an inevitable location for future growth. There is no good reason to delay that.

17. In this appeal, there are many matters not in dispute:

- (i) The site has no special landscape designation
- (ii) There is no harm alleged by reason of air quality
- (iii) There is no harm alleged by reason of noise
- (iv) There is no harm alleged by reason of residential amenity to any adjacent residents.
- (v) There is no harm alleged by reason of residential amenity to any prospective residents of the development
- (vi) There is no harm alleged by reason of archaeology
- (vii) There is no harm alleged by reason of foul or surface drainage
- (viii) There is no harm alleged by reason of flooding
- (ix) There is no allegation that the ground conditions found at the site preclude its development
- (x) There is no allegation that the site is not sustainably located

## **Issues in the appeal**

### *Housing supply shortfall*

18. At present the Council cannot demonstrate five years housing land supply: its assumptions are optimistic and lack the robustness which national policy and guidance require. No solution to this problem has been presented by the Council or the Town Council through its Neighbourhood Plan.
19. The build out rates assumed are optimistic and analysis of a number of sites in the supply pipeline reveals their deliverability is uncertain.
20. As a result, the market has rightly taken the initiative to meet that shortfall as sought by both the NPPF which accepts and encourages windfall sites to emerge when required, as they now are in the light of the shortfall that exists in the housing supply position in Colchester.
21. If, contrary to our primary submission the Inspector concluded that the Council *was* able to demonstrate a five year housing land supply, the position would be marginal at best – which is a strong material consideration for strengthening housing supply and a matter to be given weight in the planning balance.

### *Housing need*

22. One of the most important considerations in this appeal is the severity of the housing crisis in West Mersea.
23. As explained by Mr Tennant, the island of West Mersea has a local identified unmet housing need – which neither the adopted nor emerging Colchester Local Plan makes provision for, and one which the Neighbourhood Plan has studiously sought to avoid addressing. It is therefore essential that additional land for housing be identified.
24. Market signals in West Mersea tell a sorry – but sadly familiar – tale: the result of constrained housing supply is a rapidly aging population, a slow rate of growth, and a misalignment in the housing stock. This story is told also through the very strong local

demand for homes which has not been met by increased supply – leading to rapidly rising house prices, despite lower household income than in comparable areas. These sorry conclusions are only confirmed by the West Mersea Housing Needs Survey.

25. If ever there was one, this provides a compelling rationale for strengthening the supply of homes. The appeal site is an opportunity that cannot afford to be missed.

#### *Character and appearance*

26. Although the site lies on the edge of the settlement boundary, it is enclosed on three sides by residential land and represents a logical extension to the defined settlement boundary, rounding-off the existing neighbouring residential development. It is undoubtedly a sustainable location, given the very nearby other new developments which have recently been granted permission.
27. The site does not have a pastoral character: it is bounded on three sides by residential land (and on the fourth side has a large area of hardstanding, formerly a helicopter landing pad), is largely enclosed by hedgerows, and has not been used for any form of agriculture for many years.
28. When seen in the context of all else that Mersea Island has to offer in landscape terms, the value of the appeal site in landscape terms is very small indeed. Indeed it is a largely enclosed site which is ideal for development when seen in the context of the rest of the surrounding area, which is of much greater sensitivity. It is no surprise therefore to find it has no special landscape designation.
29. The Council's own local plan evidence base identified the appeal site as having potential for accommodating residential development, and the appeal site scored the same rating as the two West Mersea sites that were eventually allocated through that process. The appeal site was only discounted because the other sites had sufficient capacity to meet what the Council considered to be the need.

30. The Council's landscape criticism largely boils down to a change in view from the public right of way which passes the south-western corner of the appeal site, and from which surrounding residential development is already highly visible.
31. The other criticism, relating to the view from East Road, is peculiar because the Council raised no objection in landscape terms or otherwise to the recent extension to the Fox Inn pub (approved in 2017) which affects the very same view that the Council now claim to be sensitive to change.
32. The Council's evidence has singularly overlooked the securing of existing hedgerow screening and the provision of new planting through the section 106.
33. In relation to heritage, it is the Appellant's clear position that with mitigation the impacts on the heritage asset (Garden Cottage) would be neutral. This is carefully explained by Mr Griffiths. Again, the viewpoint from which harm is alleged by virtue of the development is the same viewpoint from which the pub extension has a considerable impact – and was not objected to or even mentioned by the LPA when that development was waved through. The illustrative plan has been designed with heritage considerations in mind, specifically to show how impact could be minimised at reserved matters stage such that there would be a neutral effect on the listed building's setting and no residual harm to its significance.

#### *Design and density*

34. The scheme is outline and detailed matters of design are therefore retained for approval as reserved matters. Nevertheless, an illustrative layout plan has been submitted which shows how the proposed development can comfortably provide 56 homes at 32 dwellings per hectare on the site (compliant with the Essex Design Guide), providing for a mix of 2, 3 and 4 bedroom properties, with an emphasis on smaller homes that would address the specific housing need for West Mersea as has been identified.
35. This level of development: (a) is entirely in keeping with the surrounding area; (b) is lower in density than the nearby recent Wellhouse Avenue development; and (c) makes optimal use of the appeal site in order to assist with the supply of market and affordable

homes, as required by the NPPF. The Council have simply not set out anywhere what actual harm they say would be caused by the density level proposed at our site.

36. As an example, it has been demonstrated in the illustrative plans that back to back distances are acceptable, and the Council have not been able to pin point any particular aspect of the scheme which is cramped or of substandard design. The written evidence simply does not support the reason for refusal at all.

#### *Highway safety*

37. There are two eminently reasonable options for access to the appeal site.
38. The first – Option A – which is *agreed* with the highway authority to be acceptable in highway safety terms, uses a visibility splay that is protected by a planning condition on the neighbouring property (condition 9 on no. 104 East Road).
39. The second – Option B – utilises some of number 100 East Road’s frontage and provides a modest traffic calming scheme which would provide a material benefit as it would improve highway safety by reducing speeding on a part of the local road network which is confirmed to have a problem with speeding (confirmed by our formal speed survey, and through residents’ concerns expressed in objections).
40. The Council appear to continue to maintain the unreasonable position in relation to Option A that they refuse to enforce condition 9, claiming that through breach it is unenforceable – despite their own photographic evidence conclusively showing there has not been continuity of breach. It is as disappointing as it is surprising that the Council have taken such an unreasonable (and irresponsible) position where on the one hand they impose a condition to protect highway safety for one property (condition 9), but on the other refuse to enforce that same condition to ensure highway safety for a number of properties.
41. Option B presents an entirely reasonable solution to any residual concerns the Council may have, and even provides material betterment to highway safety – and yet the Council



*still* object to it, in the most recent rebuttal proof making criticisms which are entirely irrelevant and which show they have closed their minds to its merits.

42. The truth is there are two eminently sensible solutions to the access issue, which the Council have curated, and access need not be an obstacle to this site coming forward.

### *Objections*

43. There is some objection from those who currently have houses. It is a bitter and familiar irony of those who object that they seek to stop others having the benefit of which they fight so strongly to protect. The level of objection found here is found in most planning applications involving greenfield development, and is to be expected in an area that has done its utmost to seek to dampen down housing growth – see the Stop350 campaign by way of example.
44. The question is whether the further objections raise any issues that require consideration in the planning balance in addition to the issues raised by the LPA.
45. The Appellant says they do not: most of the issues are reflected in the LPAs compendious reasons for refusal, and the others are matters considered by expert consultees but not thought to amount to matters justifying weight in the planning balance.

### *Planning balance*

46. The consequence of the five year supply shortfall is the engagement of the tilted balance under NPPF/11. For permission to be refused, the LPA need to show that the alleged harms significantly and demonstrably outweigh the benefits. Implicitly this requires a credible planning balancing exercise and not an artificial and false exercise where impacts are exaggerated and given absurd weighting to justify refusals which do not withstand scrutiny.
47. The alleged harms do not withstand scrutiny and are far from constituting impacts which significantly and demonstrably outweigh the benefits of the proposal.

48. Regardless of the tilted balance exercise, in relation to section 38(6) of the Planning and Compulsory Purchase Act 2004, the material considerations quite clearly outweigh the moderate and ultimately inconsequential conflicts with policy.
49. The scheme provides the following benefits:
- (i) Market and (30%) affordable housing, fulfilling severe unmet local need
  - (ii) Provision of Local Area of Play
  - (iii) Economic benefits
  - (iv) Social benefits from housing and sports facilities
  - (v) Environmental benefits of net gain
  - (vi) Archaeological contribution
  - (vii) Sports and recreation contribution
  - (viii) Community contribution
  - (ix) RAMS contribution
  - (x) Healthcare contribution
  - (xi) Education contribution
50. We therefore respectfully invite the Inspector to allow the appeal and grant planning permission.

**DAVID MATTHIAS QC**  
**JONATHAN WELCH**

**Francis Taylor Building**

**22 February 2022**

## List of appearances

1. **David Matthias QC and Jonathan Welch** of Counsel, instructed by David Maxwell of GL Hearn, will call:
  - a. **Ivan Tennant** MSc, MBA, AssocRTPI, Associate Planning Director at GL Hearn (housing supply and housing need).
  - b. **Matthew Black** BA (Hons), MA, MRTPI, Associate Planner at GL Hearn (housing: disputed sites).
  - c. **Allan Cox** BSc (Hons), MA, CMLI, Consultant Landscape Architect at GL Hearn (landscape).
  - d. **Christopher Griffiths** LLB (Hons), MA, IHBC, Associate Director at Heritage Collective UK Group (heritage).
  - e. **Steven Williamson** BEng (Hons), MCIE, MCIHT, Associate of Intermodal Transportation Ltd (access/highways).
  - f. **David Maxwell** BA (Hons), Dip, MRTPI, Planning Director at GL Hearn (design and planning policy and balance).