



Colchester Local Plan Section 2

Examination Hearing Statement

Main Matter 9 - Sustainable Settlements (Policies SS1 to SS16)

Prepared by Strutt & Parker on behalf of Bloor Homes

March 2021

1. Introduction and Background

- 1.1 Strutt & Parker made representations on the Colchester Local Plan Publication (Regulation 19) Draft, including on matters relevant to the Local Plan Section 2 (LPS2) on behalf of Bloor Homes.
- 1.2 These representations ('the Regulation 19 representations') (Comment ID 7285, 7286, 7287 and 7288) were duly made.
- 1.3 Bloor Homes' interests in respect of the LPS2 includes land at Maldon Road, Tiptree ('the Site'). This site is commensurate with sites reference TIP01 / TIP09 / TIP27 in the Council's plan-making process.
- 1.4 In the case of LPS2, it is considered relevant that considerable time has elapsed since consultation on the Regulation 19 draft which took place between June and August 2017.
- 1.5 We consider that as submitted the LPS2 is unsound, but that defects can be cured through main modifications.
- 1.6 This hearing statement concerns Main Matter 9, and addresses both questions posed in respect of this matter:
- *Are the Sustainable Settlements policies and site allocations justified by appropriate available evidence, having regard to national guidance, and local context, including the meeting the requirements of the CLP 1? (Question 1)*
 - *Do the housing land site allocations within Sustainable Settlements show how they will contribute to the achievement of the housing requirement of the CLP Section 1 (14720 new homes) and its timescale for delivery? (Question 2)*
- 1.7 Specifically, our response is focussed on Policy SS14 and proposals for Tiptree.
- 1.8 As requested, this Hearing Statement seeks to avoid repeating points already made in the Regulation 19 representations.
- 1.9 The LPS2 is being examined in relation to the NPPF 2012, as per the NPPF 2019 transitional arrangements. Consequently, unless stated otherwise, reference to the NPPF in this statement is to the NPPF 2012. Likewise, reference to PPG is to that which accompanied the NPPF 2012 unless otherwise stated.

2. Response to Main Matter 9

Are the Sustainable Settlements policies and site allocations justified by appropriate available evidence, having regard to national guidance, and local context, including the meeting the requirements of the CLP 1?

- 2.1 As discussed in our Regulation 19 representations and in response to Main Matter 2, Tiptree is evidently a sustainable location to which to direct a significant proportion of Colchester's growth.
- 2.2 However, and as touched upon in our Main Matter 2 hearing statement, we do not consider the LPS2 as drafted will facilitate sufficient growth, nor is Policy SS14 effective in this regard.
- 2.3 Issues addressed in response to this question include:
- Quantum of new homes to be directed to Tiptree by LPS2 – we consider this needs to be expressed as a minimum.
 - Broad areas of growth identified for Tiptree on the policies map – we consider identification of south-west Tiptree as a broad location for growth to be consistent with national policy and justified.
 - Reliance on a future Neighbourhood Plan to deliver growth to Tiptree – we consider the LPS2 needs to be modified such that it supports proposals for development within the Tiptree Broad Areas of Growth ahead of a Neighbourhood Plan.

Quantum of dwellings proposed for Tiptree

- 2.4 Policy SS14 ii) states:

“[Within the broad areas of growth shown on the Tiptree policies map, the Tiptree Neighbourhood Plan will]: Allocate specific sites for housing allocations to deliver 600 dwellings”

- 2.5 We consider this reference to 600 dwellings to be overly precise, and inconsistent with the NPPF's requirement to significantly boost housing land supply. Our concerns and suggested modifications are set out at paragraph 2.12, 2.13 and 2.16 of our Regulation 19 representations, and, as requested, are not repeated here.

- 2.6 Furthermore, since consultation on the Regulation 19 iteration of the LPS2 back in 2017, it is relevant to note that:
- 1 One of the two proposed Garden Communities (Colchester/Braintree Borders Garden Community) relied upon by the Borough to meet its housing requirements has been found unsound through examination of the Local Plan Section 1 (LPS1), and deleted. It had been projected to deliver 15,000 – 24,000 dwellings in total, 2,500 of which in the plan period.
 - 2 As set out in our Main Matter 2 hearing statement, there are now substantial doubts as to whether the LPS2 as proposed will provide a sufficient number of homes to meet needs. It evidently will not to meet current local housing needs as per current national policy, and it is highly questionable as to whether it will even meet the lesser housing requirement set by LPS1. Furthermore, the strategy for meeting housing needs is not imbued with the requisite flexibility to enable it to respond to changing circumstances and still ensure needs are met.
- 2.7 The deletion of the Colchester/Braintree Borders Garden Community results in the removal of 2,500 dwellings from the plan period supply, irrespective of whether the Council considers minimum numbers can still be met. As a proposed 'Sustainable Settlement' in the LPS2 settlement hierarchy (Policy SG1), and a 'District Settlement' (second tier of the settlement hierarchy, below only Colchester Town and Stanway) in the current Development Plan, Tiptree represents an appropriate settlement to which to consider directing some of the shortfall resulting from the deletion of the proposed Garden Community.
- 2.8 Tiptree is a sustainable location for growth, subject to few constraints that limit its potential expansion beyond the existing settlement boundary. It is unclear why the potential to increase the number of additional dwellings directed to it through the LPS2 was not considered following deletion of the Colchester/Braintree Borders Garden Community.
- 2.9 Separately, the current housing land supply position as discussed within our Main Matter 2 hearing statement reaffirms the need for the number of dwellings proposed to be expressed as a minimum, to help ensure the housing strategy is imbued with sufficient flexibility and that minimum needs will be met.

Broad Areas of Growth Identified for Tiptree

- 2.10 The Tiptree policies map which accompanies Policy SS14 shows the location of the Broad Areas of Growth for Tiptree, referred to in the policy text.

- 2.11 This includes a Broad Area of Growth to the south-west of Tiptree that is commensurate with the location of the Site / TIP01.
- 2.12 TIP01 and TIP09 were assessed through the Council's Strategic Land Availability Assessment (2017) (SLAA)¹ and found to be have an overall RAG rating of 'green' in relation to deliverability for housing. Other than TIP03, these were the only sites rated as 'green'.
- 2.13 The Council's Settlement Boundary Review (2017) (SBR)² provides further justification for identifying south-west Tiptree as a broad area of growth. It found that possible future expansion of the settlement to the north-east and south-east is constrained, but raised no such concerns with growth to the south-west.
- 2.14 Planning application reference 192025 (outline application for *inter alia* residential development of up to 255 dwellings, at Land at Maldon Road, rear of Peakes Close, Maldon Road, Tiptree) and its subsequent appeal also helps demonstrate that inclusion of south-west Tiptree as one of the broad area of growth is a suitable strategy. The application was refused, and the appeal³ dismissed. However, the reasons for the dismissal of the appeal were, in summary, as follows:
- 1 The site was outside of the settlement boundary as per the current Development Plan, and therefore conflicted with Policy ENV1 of the current Development Plan, which seeks to restrict development from the countryside. It was considered that, at that time, the Council could demonstrate a five-year housing land supply.
 - 2 Concerns that the specific appeal proposal would result in coalescence of Tiptree and Tiptree Heath.
- 2.15 In relation to the first point above, this is clearly not applicable to the consideration of a new Local Plan strategy in which it is manifestly clear that existing settlement boundaries must be revised in order to accommodate existing and future development needs.
- 2.16 In relation to the second point, referring to the proposed Broad Area of Growth in the LPS2, the Inspector expressly stated in the appeal decision that:

"There seems no reason why some development could not take place within that Broad Area whilst still maintaining a recognisable gap between settlements." (Paragraph 97).

¹ Local Plan Examination document reference EBC 2.17

² Local Plan Examination document reference EBC 2.16

³ Appeal reference APP/A1530/W/20/3248038

- 2.17 In short, the issue was one confined to the specific appeal proposal, rather to the principle of the location as proposed through LPS2.
- 2.18 Importantly, the appeal decision (copy provided as **Appendix A**) established there were no fundamental constraints to residential development within this location, or issues to suggest that growth here would not be sustainable.

Reliance on a future Neighbourhood Plan to deliver growth to Tiptree

- 2.19 We consider that as currently worded, LPS2 does not contain policies that will ensure growth is delivered in Tiptree, and the necessary homes for the settlement provided, due to the reliance proposed to be placed by LPS2 on a Neighbourhood Plan to achieve this.
- 2.20 Our concerns in this respect were set out in our Regulation 19 representations (at paragraphs 2.8 – 2.11, and 2.14). Our concerns remain. Furthermore, progress of the Tiptree Neighbourhood Plan since has further exacerbated our concerns, and demonstrated the need for the LPS2 to support applications for development within the Broad Areas of Growth ahead of a Neighbourhood Plan.
- 2.21 As the local planning authority, Colchester Borough Council designated the Tiptree Parish neighbourhood area in 2015.
- 2.22 Five years on from this, the Tiptree Neighbourhood Plan (TNP) was submitted for examination in 2020, and the Examiner's Report was issued 9 October 2020.
- 2.23 The Examiner's Report concluded the TNP did not meet the Basic Conditions, nor did it meet the legal requirements, and should *not* proceed to referendum. A copy of the Examiner's Report is provided as **Appendix B**.
- 2.24 Fundamental defects in the TNP were identified by the Examiner. These included:
- The TNP included proposals that extended into a neighbouring area. Proposals which the Examiner concluded would "*have a substantial, direct and demonstrable impact beyond the neighbourhood area.*"⁴
 - Lack of proportionate and robust evidence to support the TNP's proposed development strategy.

⁴ Examiner's Report, paragraph 17.2.

- Premature fixing of the spatial strategy within the plan-making process, without due regard to an appropriate SEA.
- Flaws in the SEA process, with lack of consideration of alternatives / alternatives “*set up to fail*”.⁵
- Lack of engagement with neighbouring Parish Councils.
- Reliance on a proposed new link road to determine the spatial strategy – a proposed link road for which there was no evidence it was needed, would be of benefit, was deliverable, or represented the optimum route for a new link road.

2.25 It is clear from the Examiner’s Report that a ‘quick fix’ of the TNP is not possible. In particular, the premature fixing of the spatial strategy and defects in the SEA process are matters that will require considerable additional work to resolve. They also necessitate reverting to an early stage in the plan preparation process, in order to avoid repeating the mistake of prematurely fixing the strategy.

2.26 It is likely to be a number of years until a made Neighbourhood Plan is in place for Tiptree. Indeed, there is no guarantee that a TNP will be progressed at all, and the Parish Council is not under an obligation to do so.

2.27 In such circumstances, it is considered particularly important for the LPS2 to provide decision-makers with a clear steer to respond positively to proposals for development that are located within the Broad Areas of Growth ahead of a Neighbourhood Plan.

1,537 words

⁵ Examiner’s Report, paragraph 4.6

**Do the housing land site allocations within Sustainable Settlements show how they will contribute to the achievement of the housing requirement of the CLP Section 1 (14720 new homes) and its timescale for delivery?
Requirement**

- 2.28 As set out in our response to Question 1 of Main Matter 9, we consider that the LPS2 as currently drafted places too much reliance on the preparation, and subsequent adoption, of a Neighbourhood Plan in order to deliver homes for Tiptree.
- 2.29 The current approach presents a substantial risk that the 600 dwellings the LPS2 proposes for Tiptree will not be delivered within the plan period.
- 2.30 Indeed, the Council's own evidence appears to support such concerns. Topic Paper 2 (Housing Matters) (TP2) includes a 15-year housing trajectory at Appendix 2⁶. This suggests that only 535 dwellings will be delivered in Tiptree by 2033, with the remainder projected beyond the plan period.
- 2.31 TP2 Appendix 2 indicates the LPS2 will fail to facilitate delivery of any dwellings in Tiptree during the period 2020-2025, with first completions not until 2025/26. TP2 Appendix 2 is dated October 2020, and it is unclear if it has accounted for the outcome of the Tiptree Neighbourhood Plan (TNP) Examination on 9 October 2020 (discussed in response to Main Matter 9, Question 1). Given the current position of the TNP, completions from 2025/26 now seems optimistic, unless the Council is prepared to take a positive approach to applications for residential development within the Broad Areas of Growth ahead of the TNP.
- 2.32 Even if the LPS2 were able to facilitate dwelling completions for Tiptree by 2025/26, a strategy which delays the provision of any homes to a settlement such as Tiptree (an established community, with a range of services and facilities) until such time, allowing for no growth in the early years of the plan period, cannot be considered an appropriate strategy, let alone the *most* appropriate strategy, as required by the NPPF⁷.

291 words

⁶ NB There are two Appendix 2s in TP2. The first is an appendix to Appendix 1 of TP2 (May 2020 Housing Land Supply Annual Position Statement). The second (15 Year Housing Trajectory - October 2020) begins on page 56 of TP2, and for the avoidance of doubt, references to TP2 Appendix 2 in this document are to this second Appendix 2.

⁷ Paragraph 182



Appeal Decision

Inquiry conducted by written submissions, 11 June – 24 July 2020

Site visit made on 9 June 2020

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 18 August 2020

Appeal Ref: APP/A1530/W/20/3248038

Land off Maldon Road, Tiptree, Essex

- 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 Bloor Homes Limited, against the decision of Colchester Borough Council.
 - The application Ref 192025, dated 31 July 2019, was refused by notice dated 5 February 2020.
 - The development proposed is *“residential development up to 255 dwellings, with associated car parking, landscaping, public open space areas, SUDS, link road, associated infrastructure, and provision of parent drop-off area for Tiptree Heath Primary School”*.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. As originally submitted, the description of the proposed development included up to 275 dwellings. In November 2019, with the agreement of the Council, this was amended to 255 dwellings. The Council’s decision on the application was made on this basis, and I have dealt with the appeal in the same way.
3. The appeal seeks outline permission, with all detailed matters reserved except for access. The proposed access is shown indicatively on the Development Framework Plan, 18-2833-P002 D, and in more detail on Plan 183310-002 C. In both cases, these are revised versions of the plans that were before the Council, but the changes are not contentious, and I do not consider that anyone is likely to be prejudiced by considering the appeal on this basis.
4. In all other respects, the submitted plans are illustrative. However, it is agreed between the Council and the appellants that some of the other matters shown those plans, including building heights and landscape buffers, could be incorporated by condition. In reaching my decision, I have had full regard to the possible scope for conditions on these and other matters.
5. The appeal was due to be considered at a public inquiry, scheduled for 9-12 June 2020. In the light of the restrictions brought in to combat Covid-19, an oral event could not be held at that time. As a result, with the agreement of the Council and the appellants, the inquiry was converted to a written format. The format included an exchange of proofs of evidence, followed by written rebuttals, then a series of written Inspector’s Questions to the parties, followed

- by Further Questions, and written closing submissions. This procedure was completed, and the inquiry was closed, on 24 July 2020.
6. In addition to the public consultation carried out at the application and appeal stages, members of the public were enabled to view copies of the proofs and rebuttals on the Council's website, and invited to make further comments on these. Over 200 further responses were received from members of the public and others during this further consultation. I have taken into account all of the submissions received at each of these stages. In the circumstances, I am satisfied that all those who would have been likely to wish to attend the inquiry have had adequate opportunities to make their views known, and consequently that the procedure adopted has been fair to all parties.
 7. I undertook an unaccompanied site visit on 9 June 2020. During my visit, I walked the public footpaths that skirt and cross the appeal site, together with all other nearby public footpaths and surrounding roads. From these I was able to view the site from all of the viewpoints identified in the evidence. I also saw all of the other local features which have been referred to in submissions, including Tiptree Heath School, Tiptree Heath village, Tiptree town centre, the other housing sites proposed in the draft Tiptree Neighbourhood Plan, and the site of the recent appeal decision at Barbrook Lane¹.
 8. During the course of the appeal, the appellants entered into a Section 106 Undertaking, containing planning obligations in favour of both Colchester Borough Council (CBC) and Essex County Council (ECC). Of these, the principal obligations relate to affordable housing; on-site open space, including a play area and land for a possible future junction improvement; and financial contributions to education, healthcare, community facilities, archaeology, and for off-site open space, sport and recreation, and also for the mitigation of impacts on protected habitats. In the light of the Undertaking, CBC withdrew its refusal reasons no's 4 and 5, which included these matters.
 9. Screening under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 has been carried out by the Planning Inspectorate (PINS), on behalf of the Secretary of State (the SoS). In a Direction dated 9 June 2020, the SoS determined that the proposed development was not 'EIA development'.
 10. On 15 July 2020, a request was received from Tiptree Parish Council, for the appeal to be recovered by the SoS for his own determination. That request was refused in a letter from PINS dated 21 July 2020.

Policy Framework

11. The statutory development plan for the area comprises the adopted and saved policies of the Colchester Borough Core Strategy (the CS), the Site Allocations DPD (the SADPD), the Development Policies DPD (the DPDPD), the Proposals Map, and the Essex Minerals Plan (the EMP).
12. Of these, the CS was originally adopted in December 2008, and the SADPD, DPDPD and Proposals Map in October 2010. Focussed reviews of the CS and DPDPD, with updating of some policies, were adopted in July 2014. For the avoidance of doubt, references in this decision to the CS or DPDPD are to the

¹ CD 7.6 (SoS's appeal decision and Inspector's Report – Land at Barbrook Lane, Tiptree, APP/A1530/W/19/3223010, 7 April 2020)

consolidated versions, including revised policies where applicable. The EMP was adopted in July 2014.

13. A new Local Plan for the Borough (the draft LP), to replace the CS, the SADPD and the DPDPD, is in the draft stages. The submission version was published in June 2017. Part 1 of the plan contains strategic-level, cross-boundary policies, prepared jointly with Braintree and Tendring Councils. That part of the plan is undergoing Examination, and is heading towards consultation on the Inspector's proposed modifications. The examination of Part 2 of the draft LP is intended to commence after the content of Part 1 has been finalised. The Council and appellants are agreed that the draft LP in its current form carries limited weight, and given the stage of progress reached, I concur with this approach.
14. The draft Tiptree Neighbourhood Plan (TNP) was subject to public consultation under Regulation 14 in June - July 2019, and was submitted to the Council in March 2020. As at the close of the present appeal inquiry, further consultation under Regulation 16 was in progress, and due to finish on 10 August 2020, with a view to commencing the Examination shortly thereafter. Relevant objections are anticipated. Until any such objections have been considered through the Examination process, the draft TNP carries limited weight.
15. A replacement Minerals Plan is in the very early stages, and as yet carries no weight.
16. The National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG) are material considerations, and I have had regard to these where appropriate.

Main issues

17. In the light of all the submissions made, the main issues in the appeal are as follows:
 - i) whether Colchester Borough has a 5-year supply of land for housing;
 - ii) the extent to which the proposed development would accord or conflict with relevant policies for the location of housing in the adopted Development Plan, and the weight to be given to those policies;
 - iii) the extent to which the scheme would accord or conflict with the location policies of the emerging draft Local Plan and draft Neighbourhood Plan, and whether the development would be premature in relation to those plans;
 - iv) the effects on the character and appearance of the area's landscape and townscape, including the setting of Tiptree and its separation from Tiptree Heath;
 - v) the effects on mineral resources.

Issue (i): Housing land supply

The housing requirement

18. The Council's case is based on the draft '2020 Housing Land Supply Annual Position Statement', dated April 2020. Although this draft statement is acknowledged to be based partly on estimated completions data, due to the Covid-19 restrictions, it is accepted as the best and most up-to-date information available in the circumstances. Using the Standard Method, it is

agreed that the 5-year requirement for the period 2020-25, including a 5% buffer, is 5,659 dwellings.

19. Against this requirement figure, the Council's claimed supply amounts to 6,108 dwellings, or a surplus of 449 units.

Deliverability

20. Out of the nine disputed sites identified in Table 3.1 of the Statement of Common Ground, agreement has since been reached with regard to one of these, the Brierley Paddocks site. The disagreements between the parties therefore relate primarily to the remaining 8 sites.
21. In terms of the NPPF's definition of 'deliverable', the majority of the disputed sites come within Category (b), due to either having outline planning permission², or being allocated for housing³, or being included in a Brownfield Register⁴. In these cases, to be considered deliverable, the NPPF requires clear evidence that housing completions will begin within five years.
22. The remaining three sites⁵ fall outside of both Categories (a) and (b). However, in the light of the Consent Order agreed by the SoS in the case of *East Northants Council v SoS and Another*, it is now clear that this need not prevent these sites from being deliverable, provided that they otherwise meet the requirements set out in the NPPF's definition.
23. In any event, I have considered all of the disputed sites against the NPPF's over-arching test for deliverability, which is that sites should be available, suitable, and achievable with a realistic prospect of housing being delivered within five years. I have also had regard to the related advice in the PPG, which gives examples of the types of evidence that may be relevant. These include any progress towards the submission of an application, or progress on site assessment work, or information about viability, ownership or infrastructure.

The disputed sites

Land North of Magdalen Street

24. The site known as Land North of Magdalen Street benefits from a previous, partly-implemented permission, but this is not now relied on, as the developer regards that scheme as no longer viable. However, a subsequent full application for a revised scheme has recently gained a Committee resolution to grant permission, subject to a S.106 agreement. Furthermore, the heads of terms for the latter are said to be already agreed. The revised total of 119 units at the site is one less than in the Council's draft position statement, but the difference is not significant.
25. It is always possible that finalising an agreement may take longer than expected, and with the continuing effects of the Covid-19 pandemic, there is added uncertainty. But nevertheless, the Council's trajectory for the site does not rely on any completed units until year 2023/24, which allows a reasonable amount of time for further negotiations if necessary, as well as the discharge

² The only site with outline permission is Halstead Road, Eight Ash Green

³ The sites which are allocated in adopted plans are: Fiveways Fruit Farm, Essex County Hospital, Garrison K1, and Mill Road Rugby Club

⁴ The Essex County Hospital site is also on a Brownfield Register

⁵ North of Magdalen Street, East of Hawkins Road, and Land at Berechurch Hall Lane

of conditions. And in any event, the position which has been reached now, in terms of the progress of the application and related site assessments, substantially exceeds the PPG's threshold of progress towards an application.

26. In the Barbrook Lane decision, the Magdalen Street site was expected to contribute only 72 dwellings to the 5-year supply, albeit that in that case the relevant 5-year period was 2019-24. But it is not necessary for me to know in detail the reasons why the figures for individual sites may have changed. I have considered the evidence before me now on its own merits. I have taken account of the site's history of rather slow progress, but this preceded the stage that has now been reached, and cannot be taken as an indicator of future performance. It is clear from the evidence submitted that the developer is committed to the development.
27. Like most of the other disputed sites, the availability and suitability of the Magdalen Street site are not in issue, but only the achievability. In the light of the foregoing matters, I am satisfied that there is sufficient clear evidence to show that the development can be expected to be completed within the relevant 5-year period. Although this does not amount to absolute certainty, it would not be realistic to interpret the relevant guidance as seeking that level of proof. In this case the evidence clearly shows, at the least, a real prospect of delivery within five years. The site is therefore deliverable, within the terms of the NPPF definition.

Essex County Hospital

28. Turning to the Essex County Hospital site, in the Barbrook Lane appeal the Inspector was not persuaded that there was a realistic prospect of the site being developed within 5 years, and the SoS did not disagree. Since then however, applications for full planning and listed building consents have been submitted and consulted on, and further revised plans have been submitted in response to the relevant officers' assessments. As at the close of the present inquiry, a recommendation of approval had been made, and was about to be considered by the Planning Committee.
29. I fully accept that the Hospital site does not as yet have planning permission, nor even a resolution. However, as set out above, when the relevant paragraphs of the NPPF and PPG are read together, showing deliverability is not necessarily dependent on reaching that stage. Again it is apparent that the progress that has been made, with the submission and consideration of the current applications and related assessments, meets and exceeds the relevant thresholds in the PPG.
30. The sale of the land has yet to be completed, but it is said that Essex County Council's own housing company, Essex Housing, has been selected as the preferred developer, and the transfer therefore appears to be mainly now a matter of legal formality. The scheme will involve some demolition, but there is no evidence that this will be a complex or lengthy process. In any event, the Council's trajectory for the site allows for some slippage, if necessary, without going beyond the relevant period.
31. In the light of the above, the evidence clearly points to the development being completed at some time before April 2025. I consider there is sufficient clear evidence to justify the site being counted as deliverable, yielding 120 units.

'Garrison K1'

32. With regard to the site known as Garrison Site K1, again this was not accepted as deliverable in the Barbrook Lane decision. However, since then an application for full permission for 33 units has been submitted, consulted upon, and revised. The application is made by a well-known social housing developer. Officers anticipate making a positive recommendation in the near future. Further consultation is still required before a formal decision can be made, but having regard to the relevant PPG advice, I am in no doubt that the progress made on this planning application, and related site assessments, is significant.
33. In considering Site K1, it seems to me highly relevant that the principle of residential development, as part of the larger Garrison Urban Village area, has been well established for some time. This has occurred through the 2004 Local Plan, the 2010 Site Allocations Plan, an adopted Development Brief, the Garrison Master Plan SPD, and the 2003 outline permission for the whole site. I also note that the remainder of the Garrison site is now developed or under construction. The Council's suggested trajectory seems to me to allow ample time for any S.106 agreement and the discharge of conditions.
34. I am therefore satisfied that Garrison K1 has a realistic prospect of housing completions within the relevant period, and should be counted as deliverable. The figure of 33 units in the current revised application is an increase of 8 compared to the number assumed in the draft position statement, but in the light of the evidence I see no reason not to accept this slightly higher figure. Again, the difference is not significant in the final calculation.

Land East of Hawkins Road

35. On the Land East of Hawkins Road, there is a current full application for 282 student apartments. There is no dispute that this equates to 113 housing units. The application has been under consideration for some considerable time, leading the Inspector in the Barbrook Lane appeal to conclude that the evidence before her was not robust enough to justify the site's inclusion. But be that as it may, I must consider the position based on the evidence before me now.
36. The Council states that the length of the negotiations to date reflects the authority's desire and commitment to securing a high-quality development. To that end, it is said that a significant measure of agreement has recently been reached with regard to a landscape and visual assessment. This evidence is not challenged. I can see no likely reason why either the Council or the developer would have continued to negotiate at such length unless both were committed to achieving a deliverable scheme. Although the process to date has evidently been slow and tortuous, it seems that continued progress is being made. Having regard to the PPG advice, it seems to me that this progress on the application and assessments falls clearly within the types of evidence that are relevant to deliverability.
37. Although the adopted local plan allocates Hawkins Road for employment, the Council's photographic evidence shows clearly the extent to which the area has been redeveloped in recent years with a high proportion of modern apartments. Despite the historic employment status, it is clear that the Council is now seeking to encourage regeneration including residential uses,

and this change is said to be reflected in the emerging draft replacement local plan.

38. The weight of the evidence therefore supports the Council's view. The current application is well advanced and appears to be progressing towards a grant of full planning permission. Although there has been a lack of urgency, the Council's trajectory does not rely on any dramatic change of pace in this particular case. I therefore find sufficient clear evidence of a realistic prospect that the development is likely to be completed within the 5-year period.

Fiveways Fruit Farm

39. The Fiveways Fruit Farm site has a current outline application for 442 dwellings, with a long-standing resolution to grant permission subject to a S.106 agreement. In the Barbrook Lane appeal, the SoS accepted that 250 of the proposed dwellings on the Fiveways site should be counted as deliverable within the relevant period. Although little tangible progress has been achieved since then, the Council states that this was due to a particular issue over education contributions, which has now been resolved. I have no reason to doubt this evidence. So, whilst the negotiations over the last year or so have been slow, there is nothing to indicate that they cannot now be successfully concluded in due course. Having regard to the NPPF and PPG, I consider that this evidence shows a realistic prospect that housing completions will be delivered within the relevant period.
40. With regard to the numbers, the Council's trajectory relies on achieving the first 50 completions in 2021/22, with 100 units per year thereafter. I appreciate that two developers are involved and will be operating in tandem. I also note that some of the new dwellings can be served from the existing road, which may reduce the lead time for those units. But even so, given the need for reserved matters and discharge of conditions for the development as a whole, this trajectory now looks somewhat over-optimistic, especially compared to that which appears to have been put to the Barbrook Lane inquiry. In my view, it would be more realistic to plan on the basis of extending the lead time by about a further 6 months, with the first completions coming in around the second quarter of 2022. On this basis, about 50 units would be lost from the final year of the 5-year period.
41. Overall therefore, I consider that the Fiveways site should remain in the deliverable supply, but with the dwelling yield reduced from 350 to 300 units.

Colchester Rugby Club, Mill Road

42. With regard to the Rugby Club site, at the time of the Barbrook Lane appeal, although an application had been submitted, the Inspector found insufficient evidence of deliverability. Since then however, the situation has apparently moved on in a number of ways. A second planning application has been made, and detailed permission granted, for the first phase of advance infrastructure works, including a renewable energy centre, a heat distribution network, a pedestrian boulevard with landscaping, and road access connections. Construction on these infrastructure works is now said to have started, and tender documents are in the process of being prepared for the remainder. Full grant funding for all of these works appears to have been secured, including over £5m from the Housing Investment Fund, and from other sources. In addition, arrangements have been made for the development to be managed

by Colchester Commercial Holdings, a Council-owned limited company, and the company has invested in additional resources and expertise for this purpose. Negotiations are also said to be in progress with third-party developers, to deliver specific parts of the development, including some of the housing and the extra-care units. As far as I can tell, all of these matters appear to post-date the Barbrook Lane inquiry.

43. It remains the case that the site does not yet have planning permission for the housing itself. And although the current hybrid application is said to include some detailed elements, the housing elements remain in outline. There is still also an unresolved issue regarding off-site highway requirements. These are potential impediments. But nevertheless, given the site's particular circumstances, the weight of evidence points to it being deliverable. Very large sums of public money and other public resources have been committed to the project. The works that have been approved and commenced are integral to the development, and there is no suggestion that they will serve any other purpose. In addition, the site is allocated in a made Neighbourhood Plan. Given the stage that has now been reached, whilst it is still possible that the highways issue might cause some further delay, it seems unlikely that this could ultimately prevent the application from being approved, or the housing elements of the scheme from proceeding to reserved matters and implementation.
44. The Council's trajectory assumes the first 50 completions in 2021/22, with 100 per year thereafter. Given the remaining uncertainty as to the timing of outline permission, and the potential for some delay due to this, it seems to me that it would be safer to allow for a longer lead time. On this basis, I consider that 50 units, equating to 6 months' at the projected full annual build rate, should be deleted. As at the Fiveways site, this reduces the number of dwellings to be counted towards the 5-year supply, from 350 to 300 units.
45. Subject to this adjustment therefore, I conclude that the site is deliverable, with a realistic prospect of delivering 300 dwellings.

Halstead Road, Eight Ash Green

46. The site at Halstead Road has outline planning permission, and a subsequent further permission for an amended access. The site is in the hands of an experienced land promoter, who has clearly devoted considerable time and resources to reaching this stage. To my mind this makes it likely that the costs of development will have been fully investigated, and viability established. There is no evidence that any underground pipelines which may be present will adversely affect the prospects of development. Although the sale of the site to a housebuilder earlier this year appears to have faltered because of the Covid-19 situation, this does not seem to me to mean that a sale cannot be expected to take place at some stage.
47. But nevertheless, as of now, no house-building developer appears to be involved, and there is no evidence of any progress towards any reserved matters applications. There is therefore nothing at present that points towards completions beginning within five years. As such, the site cannot be counted as deliverable. This results in a deduction of 150 units from the Council's supply.

Land at Berechurch Hall Road

48. The site at Berechurch Hall Road is a greenfield site, outside the settlement boundary, and therefore contrary to the adopted development plan. It has no planning permission. A current application is awaiting determination, but is subject to objections. The land forms part of a proposed allocation in the emerging draft local plan, but at present that draft plan carries limited weight. The principle of development has therefore not yet been established.
49. In addition it appears that, for highway reasons, any direct access to the site is likely to be allowed on a temporary basis only, and in the longer term provision will be required for access via the adjoining land, in separate ownership. It is clear that no agreement for any such access has been entered into. On this point, I note that the Council's evidence is contradicted by the letter produced from the agent acting for the intending developer.
50. In the circumstances, the site in question cannot at present be regarded as deliverable. This results in the loss of a further 32 units from the 5-year supply.

Effects of the Covid-19 pandemic

51. It is difficult to disagree that, across the country as a whole, the Covid-19 pandemic has probably had an adverse impact on the capacity of the planning system over the last few months. The need for officers to work from home has meant fewer opportunities to carry out site visits and other essential tasks, and has reduced access to information and advice. Committee meetings have had to be held remotely. Contentious decisions, especially, have become more difficult to conclude. As a result, it does seem likely that in many areas the overall effect will have been to slow down the decision-making process, with a consequent lengthening the timescales for developments, at all stages of the planning process.
52. However, it must also be recognised that when the overall picture is presented in this way, that picture is at present based mainly on generalised impressions and anecdotal evidence. At local level, it seems to me that the pattern of responses in different areas is likely to have been more varied. In Colchester, it is clear from the evidence before me that, despite the difficulties, continued progress has been made on a number of the major housing sites, and also on the emerging draft LP and TNP. As things stand therefore, the evidence available does not justify making any allowance or adjustment to the 5-year supply on account of the effects on the planning process.
53. I fully acknowledge that the pandemic's effects go beyond just planning. During the lockdown period, construction on most sites came to a halt, and even for those that were able to keep going, supplies of materials became more scarce, and productivity was reduced by social distancing. Even now that the lockdown has been relaxed, some of these effects may linger, and the capacity of the building industry may continue to be affected into the future. Similarly, the house sales market was brought to a standstill for several weeks. Even now that the restrictions have been removed, the backlog of stalled transactions could slow down the process of buying and selling for some time. And in the wider economy, there are well-publicised fears that job losses could result in falling property values and a depressed market. Put simply, fewer buyers might mean fewer houses built, and more housing needs unmet.

54. But the 5-year supply is concerned only with the number of deliverable sites, and that figure is entirely separate from the number of houses actually built and occupied. Clearly it is right that the underlying purpose of the exercise is to boost housing supply. But the provisions in the NPPF that trigger the tilted balance, and with it the presumption in favour of sustainable development, relate only to the number of sites and their deliverability. Forecasts of the pandemic's effects on actual housing delivery are not directly relevant to this exercise.
55. I have taken account of the decision in the appeal relating to land at Finchampstead, Berkshire⁶. However, for the reasons explained above, I do not consider in this case that any adjustment should be made to the 5-year supply figures in response to the Covid-19 pandemic situation.

Effects of the draft Local Plan Inspector's interim findings

56. The Examining Inspector, in his letter of 15 May 2020, advised that Part 1 of the draft replacement LP could not be found sound in its current form. The Council has subsequently chosen to accept the deletion of the proposed Colchester/Braintree Borders 'Garden Community', with the consequent need for consultation on main modifications. As a result, the timescales for progressing both Parts 1 and 2 of the draft LP will now be lengthened.
57. However, although the Garden Community was expected to make a major contribution to the Borough's medium and longer term housing needs, it was not relied on for any completions within the next five years, and therefore its loss does not affect the land supply position for the present appeal. None of the other disputed sites discussed above are dependent on the adoption of the new plan for their deliverability. The Inspector's letter also reconfirms his earlier finding that the draft Plan's overall housing requirement figure is acceptable.
58. It therefore follows that, for the purposes of this appeal, the land supply calculation is unaffected by the latest position reached on the draft LP.

Conclusions on housing land supply

59. As set out above, the 5-year housing requirement is 5,659 dwellings. From the Council's claimed supply of 6,108 dwellings, for the reasons given above, I deduct 50 units at the Fiveways site, 50 units at the Rugby Club site, 150 at Halstead Road, 32 at Berechurch Hall Road, and 1 unit at the Magdalen Street site. I also add 8 units at the Garrison K1 site. These adjustments result in a 5-year supply of 5,833 dwellings, or a surplus of 174 units. This would equate to 5.15 years' worth of deliverable land.
60. On this basis, even if the extended lead times at Fiveways Farm and the Rugby Club sites were increased from 6 months to a year, the supply would still exceed 5 years. To my mind, this indicates a degree of robustness in the above position.
61. The surplus of supply over the 5-year requirement is small. But nevertheless, on the evidence available, I am satisfied that a 5-year supply has been demonstrated. It follows that no planning policies relevant to the appeal should be considered out of date by virtue of the housing supply position.

⁶ APP/X0360/W/19/3238048

Issue (ii): Relationship to adopted policies for location of housing

Policy ENV1 and the settlement boundary

62. The settlement boundary around Tiptree is defined on the Tiptree Inset of the Proposals Map. The appeal site lies outside the defined boundary, and therefore, for policy purposes, forms part of the countryside.
63. Policy ENV1 of the CS is an environmental policy which seeks to conserve and enhance the Borough's natural and historic environment, countryside and coastline. Amongst other things, the policy states that unallocated greenfield land outside settlement boundaries will be protected, and that development within such areas is to be strictly controlled. It is not disputed that these provisions in Policy ENV1 amount to an in-principle objection to development in the countryside. This in-principle element is separate from, and in addition to, any detailed consideration of a development's actual impacts on the landscape, visual amenity, or other aspects of the environment. Consequently, as agreed in the Statement of Common Ground, the appeal proposal conflicts with Policy ENV1 in with regard to its location in the countryside.
64. In the Barbrook Lane case, and also in some other recent appeal decisions⁷, the SoS and inspectors have commented that Policy ENV1 goes beyond what is required by the NPPF. However, those appeals were determined in a context where the Borough did not have a 5-year supply of housing land. That is now no longer the case. It remains true that the NPPF does not specifically state that development in the countryside should be subject to strict control, but neither does it forbid such a policy. In the present context, where an adequate land supply has been demonstrated, I see nothing incompatible about this element of Policy ENV1. What the NPPF does require for the countryside is the recognition of its intrinsic character and beauty. There is no suggestion that Policy ENV1 fails to reflect this approach.
65. I appreciate that Policy ENV1 is now of some age, and was formulated under earlier Government policies. But these considerations alone do not make the policy out of date, provided that its content remains relevant and broadly consistent. It may also be true that, in order to achieve a 5-year supply, the Council has had to allow Policy ENV1 to be outweighed in some particular cases. But that does not imply that the policy has been abandoned, nor does it prevent it from carrying weight in other decisions. Indeed, for the reasons already explored, the policy is still clearly needed, to ensure that the role of the countryside continues to be recognised. In the circumstances of the present appeal, I find no reason to give Policy ENV1 anything less than the full weight that is due to it as part of the adopted development plan.
66. Similar considerations also apply to the Tiptree settlement boundary. The present boundaries throughout the Borough were drawn to accommodate expected requirements up to 2023. In the event, in the light of rising needs, it has been necessary for some breaches of those boundaries to be permitted. But having now made adequate provision for housing for the next five years, the need is no longer so pressing. At Tiptree, the boundary is already under review, in both the emerging draft LP and the draft TNP. The new boundary is

⁷ Including Bakers Lane, Braiswick (APP/A1530/W/17/3178656), and Colchester Road, West Bergholt (APP/A1530/ W/18/3207626)

yet to be finalised, and there is scope for further adjustments to be made , if necessary, through the plan-led system. In the meantime, in the absence of an immediate need, I see no reason why the existing, adopted settlement boundary should not continue to carry full weight.

Other policies

67. In the evidence before me it is also argued that the site's location gives rise to in-principle conflicts with three further policies, Policies SD1, H1 of the CS, and Policy DP1 of the DPD. In the case of these particular policies, I disagree.
68. Policy SD1 is primarily strategic in nature. The policy requires development to be located at the most accessible and sustainable locations, in accordance with the settlement hierarchy. Tiptree is identified within the second tier of that hierarchy. The policy makes no reference to settlement boundaries. To my mind therefore, the appeal site would accord with this general strategy. The policy goes on to express some secondary aims, in relation to sustaining vitality and local character, but these are clearly subsidiary. To my mind, if there were a proven need for more housing sites, then the appeal scheme's general accordance with SD1 would count in its favour. But in the absence of such a need, this accordance carries little or no weight. The figures given in Policy SD1 for the overall quantity of housing are agreed to be out-of-date, but since the introduction of the Standard Method, these figures are no longer relevant. Consequently, in the circumstances of this particular case, Policy SD1 as a whole is neutral.
69. For the most part, Policy H1 repeats the contents of Policy SD1 regarding the quantity and general locations for housing. Similar considerations therefore apply to these elements. Policy H1 then goes on to give a more detailed housing distribution, by settlement, as set out in Table H1a, including 680 for Tiptree. But since this is based on an overall total which is now out-of-date, the figures for the individual settlements carry reduced weight. And in any event, these are stated to be minima. Again the policy makes no reference to settlement boundaries. Consequently, as before, if a need for additional housing sites had been demonstrated through the 5-year supply, it seems to me that Policy H1 would weigh in favour. But again, in the absence of such a need, the policy's effect is neutral.
70. Policy DP 1 is in my view purely a design policy. Although the policy includes a requirement to respect or enhance the landscape, when this is read in the context of the policy as a whole, it is clear that this is intended as one of a series of criteria relating to matters of detailed design and layout. If permission were granted, there seems no reason why this requirement, or any others within the policy, could not be satisfied at the reserved matters stage.
71. None of these additional policies therefore adds anything further to the conflict already established in relation to Policy ENV1.

Conclusion with regard to housing location policies

72. The appeal proposal would involve an in-principle conflict with the provisions of CS Policy ENV1 relating to development in the countryside.
73. The location does not give rise to any in-principle conflict with any other adopted policies, including SD1, H1 or DP1. But equally, given the availability

of a 5-year land supply, and thus the lack of a proven housing need, none of those other policies lends any support to the appeal scheme. It follows that the conflict with Policy ENV1 alone is sufficient to establish that the appeal scheme is contrary to the locational strategy of the development plan.

74. In the present case there is no compelling evidence that Policy ENV1 is inconsistent with the NPPF, nor that it should be treated as out of date for any other reason. In these circumstances, ENV1 carries the full weight of the adopted development plan.

Issue (iii): Relationship to the emerging draft plans

The draft replacement Local Plan

Accordance or conflict with the draft LP

75. For the reasons given earlier in this decision, the policies and content of the draft LP currently carry limited weight. Nevertheless, Policy SG2 sets out a housing distribution for the plan period 2017-33. For Tiptree the proposed figure is 600 dwellings, all of which are to be found through new allocations. Draft Policy SS14 identifies three 'broad areas of growth', depicted by arrows on a plan. One of these arrows crosses the northern part of the appeal site, just to the north of Peakes Close. Within the three areas of growth, the draft policy requires that the settlement boundary is to be redefined, and land allocated for 600 dwellings, and that these details are to be determined through the Neighbourhood Plan.
76. From the wording of draft Policy SS14, it is clear that what is intended is that the Tiptree settlement boundary will be redefined in all three broad areas of growth, and that development will take place in each of them. Although the arrows are only indicative, there is little doubt that the development envisaged in the most southerly of these would include at least part of the present appeal site. Nothing in Policy SS14 or elsewhere the draft LP would appear to prevent the re-drawn boundary from including the whole of the appeal site. Out of the 600 dwellings earmarked for Tiptree through draft Policy SG2, 200 have since been taken up by the Barbrook Lane permission, but as yet no other major sites are formally committed. The 255 dwellings proposed in the appeal scheme could therefore be accommodated within the balance of Tiptree's allocation, without disturbing the overall distribution. In all these respects, the appeal scheme would involve no direct conflict with the emerging draft LP.
77. This is not to say that the appeal scheme should be seen as the inevitable outcome of the draft LP's proposals for this part of Tiptree. Policy SS14 leaves a number of matters to be determined in the TNP, including the extent of development and the number of dwellings in each of the identified broad areas. But accordance with the neighbourhood plan is a separate matter. The appeal scheme seems to me to represent one possible way of fulfilling Policy SS14, and to that extent the draft LP weighs in favour, albeit that the weight is limited.

Prematurity in relation to the draft LP

78. Having regard to paragraph 49 of the NPPF, although the appeal proposal would be quite sizeable, the 255 proposed dwellings would equate to only a little over 3 per cent of the 7,853 dwellings that the draft LP currently

proposes in new allocations, or about 1.7% of the plan's overall total of 15,063 dwellings. In relation to the draft plan as a whole therefore, the appeal proposal is not particularly significant. Moreover, the Council has confirmed that granting permission for the appeal scheme would not result in a need for any consequential changes to the draft LP. Any consequential impact on the TNP is not relevant to the draft LP. I see no basis on which the development now proposed could, in the words of paragraph 49, undermine the draft LP, or predetermine any decisions that are central to it.

79. Furthermore, although the draft LP has reached the examination stage, it also still has some way to go, and indeed rather more potential hurdles in its way than would usually be the case at this stage. This is because of the two-stage examination process, with Parts 1 and 2 of the plan being examined in sequence, and also because the need for significant modifications to Part 1 could yet have a knock-on effect on the content of Part 2. I appreciate that the Council hopes to avoid that scenario, but to my mind it is one that cannot yet be ruled out. In the circumstances, I do not consider that the draft LP can be regarded as 'well advanced'.
80. Applying the NPPF tests, therefore, the appeal proposal would not be premature in relation to the draft LP.

The draft Neighbourhood Plan

Accordance or conflict with the draft TNP

81. The draft TNP proposes to realign some sections of the Tiptree settlement boundary to the north and north-west of the town, and proposes three housing allocations in these areas, totalling 625 dwellings. At the appeal site no boundary changes or housing development are proposed. With regard to the countryside outside the settlement boundary, draft Policy TIP01 restricts development to various defined categories, none of which are relevant to the present case.
82. The appeal scheme would therefore conflict with TNP Policy TIP01, based on the settlement boundary as currently proposed. As with the draft LP, for the reasons given elsewhere in this decision, the policies of the draft neighbourhood plan currently carry limited weight. Accordingly this conflict with Policy TIP01 also carries limited weight.

Prematurity in relation to the TNP

83. Although the draft TNP has progressed to the Regulation 16 stage, it too, like the draft LP, still has some significant hurdles to face. As at the date when the present appeal inquiry closed, the public consultation period for the TNP was still in progress. The appellants in the present appeal have confirmed their intention to make an objection. This, and any other objections, are yet to be considered at the plan's Examination.
84. Amongst the other matters to be considered at the Examination will be the TNP's conformity with the development plan. Whilst it is not my intention to speculate on the outcome, it is difficult to ignore the fact that in this case the development plan context has become somewhat more complicated than it might have appeared when the TNP was being prepared. This is potentially significant, because the draft TNP is clearly predicated on the housing and spatial policies of the emerging draft LP, but now the future content of that

plan has become more uncertain than it may have seemed earlier. In relation to the adopted CS, it is not disputed that the TNP conflicts in terms of both housing numbers and their location, so the matter of conformity with the draft LP is likely to be particularly important. Taking into account the evolving nature of this development plan context, I consider that the TNP cannot yet be considered 'well advanced'.

85. In relation to the scale of the housing proposals in the draft TNP, the appeal proposal would equate to about 40 per cent of the plan's total provision. In this context therefore, the appeal proposal would be significant. Although the Council has again indicated that, in their view, permission could be granted for the appeal scheme without forcing any changes to the draft plan, this would be primarily a matter for the Qualifying Body.
86. From the representations before me, there appears to be quite a lot of local support for the other sites allocated in the TNP, not least because these are perceived as being capable of enabling a northern relief road. But there is also evidently a good deal of local concern about cumulative impact, including on local health and education services. It is not yet known whether granting permission for the appeal site would be likely to result in changes to the draft TNP. The appeal proposal therefore does have the potential, due to its size, to undermine or predetermine some of the decisions that would be central to the TNP. However, having regard to NPPF paragraph 49, this alone does not justify a refusal.
87. Consequently, having found the TNP not to be well-advanced, a refusal of permission for the appeal scheme, on the grounds of prematurity in relation to the neighbourhood plan, is not supportable.

Conclusion on prematurity

88. I conclude that the case for refusal on grounds of prematurity has not been justified, in relation to either the emerging draft LP or the draft TNP.

Issue (iv): Effects on the area's character and appearance

Relevant landscape and townscape policies

89. As well as controlling development in the countryside in principle, CS Policy ENV1 also requires development in rural locations to protect, conserve or enhance the character of the landscape and townscape, including maintaining the separation between settlements. For the reasons already stated, I give Policy ENV1 as a whole full weight.
90. The NPPF, at paragraph 127, seeks amongst other things to ensure that development is sympathetic to local character and history, having regard to its landscape setting, and establishes or maintains a strong sense of place.

Landscape quality and impact

91. I have given careful consideration to the landscape and townscape evidence produced on both sides, and have made my own observations on my site visit. The appeal site comprises flat or gently sloping arable land, surrounded by hedgerows containing some larger trees. Other than this boundary vegetation, the site is featureless. Visually, the site's character is pleasant and open, but not particularly interesting. The site itself therefore offers little by way of any intrinsic landscape character or quality.

92. Having regard to the Colchester Landscape Character Assessment, the appeal site does reflect some of the key characteristics of the Tiptree Wooded Farmland, but these characteristics are by their nature commonplace. In some respects the site could be said to be representative of its type, but this alone does not give it significant interest or value. The footpaths appear quite well-used for informal leisure purposes, but none is part of any designated longer route. None of these attributes elevates the site above the status of 'ordinary' countryside, pleasant but unremarkable.
93. Public views of the site are seen from Maldon Road, and from the three public footpaths that either skirt or cross the site. All of these views from are close-range only. Partial, filtered views are obtainable at medium-range from some points on the elevated section of Footpath 21, in the vicinity of the Inworth Grange Pits, with the existing town in the background. There are no significant longer views, either inward or outward. In these respects therefore, the site's contribution to the wider landscape is limited.

Coalescence

94. Notwithstanding the above, the appeal site also lies partly within the gap between Tiptree itself and Tiptree Heath. There is no doubt that in some respects this gap might be seen as a tenuous one. On the south side of Maldon Road, built development is almost continuous, with only a short undeveloped section, extending for just a few metres, at the junction with Hall Road. On the north side, there is a large open field to the rear of the Ship public house and Heathway Cottage, but this is largely screened from the road. The corner of this field meets the road between Heathway Cottage and Shrublands, but the gap between these two properties is negligible.
95. This leaves the southern part of the appeal site as the only significant length of open frontage between Tiptree and Tiptree Heath, on either side of Maldon Road. Seen on the ground, this amounts to a far smaller separation than that suggested by the boundaries shown on the Proposals Map. But to my mind this only increases the gap's sensitivity. The appeal site frontage does not correspond with the 'Distinctive Gateway' identified in the 2006 Townscape Character Assessment report, but that does not alter the facts that I observed on my visit. In my view, the fragility of the settlement gap that remains is self-evident, and serves to highlight the importance of the appeal site in this context.
96. I appreciate that in policy terms, in the adopted CS, Tiptree Heath is treated as a detached part of Tiptree, rather than as a separate village in its own right. There is also a lack of any separate road signage. But on the other hand, the fact that Tiptree Heath is named on the Ordnance Survey map suggests a historical role as a distinct entity. And it is clear from the letters from many local residents that there is a strong sense of local identity associated with Tiptree Heath as such. Although the emerging draft LP and TNP propose to abandon the current detached settlement boundary, this does not change the fact that what exists on the ground is essentially a small rural settlement, which has partly coalesced with Tiptree, but still retains its own distinctive identity and sense of place.
97. For the reasons already explained, I do not consider that the draft LP's proposal for a Broad Area of Growth in this vicinity should be interpreted as

welcoming further coalescence in this area. There seems no reason why some development could not take place within that Broad Area whilst still maintaining a recognisable gap between settlements.

98. Having regard to the provisions identified above in Policy ENV1 and NPPF paragraph 127, it seems to me that it is clearly desirable that the separate character and setting of Tiptree Heath should be respected, and its sense of place maintained.

Impact of the appeal proposal

99. If the appeal site were developed as now proposed, by far the major part of the existing gap between Tiptree and Tiptree Heath would be lost. The Development Framework Plan shows how an area of open green space could be located in the site's south-western corner, with housing set back behind. But as currently shown, this open space would be quite small relative to the area of new housing that would be in view, and the space would also be fragmented by the proposed main access and school car park. In my view this would not significantly mitigate the impression of development filling the whole of the appeal site frontage.
100. Furthermore, in this light, the suggested remedy of providing a wider landscaping buffer on the site's western boundary would appear somewhat tokenistic. In my view, this would not ameliorate the impression of continuous development. I appreciate that the Framework plan is illustrative, but even so, there is nothing in the submitted evidence to suggest that 255 dwellings could be accommodated on the site, whilst also preserving any meaningful separation between the two settlements.
101. Eliminating the majority of the gap between Tiptree and Tiptree Heath in the way now proposed would greatly weaken the perception of Tiptree Heath as a small rural settlement with its own identity and character. It would also detract from the physical landscape setting of both settlements.
102. Development on the southern part of the site would partially mask the 'harsh urban edge' at Peakes Close, as also identified in the Townscape Character report. But in my view this minor benefit would be far outweighed by the landscape and townscape harm that I have identified.

Conclusion regarding impact on character and appearance

103. The appeal site's landscape quality is no more than average, and its role in the wider landscape is negligible. However, the effective closing of the gap between Tiptree and Tiptree Heath would be highly damaging to the setting of both, and to the rural character and identity of Tiptree Heath in particular. This harm would be contrary to NPPF paragraph 127, and would add to the conflict with Policy ENV1.

Issue (v): Effects on mineral resources

Relevant minerals policies

104. In the adopted MLP, the appeal site is not designated as either a preferred site or a reserve site for mineral extraction, but is included in a Minerals Safeguarding Area (MSA). In such areas, MLP Policy S8 seeks to safeguard

significant economic resources, of national and local importance⁸, from sterilisation by surface development. Proposals for sites exceeding 5ha (in the case of sand and gravel) are to be supported by a Minerals Resource Assessment (MRA), to establish whether the mineral resource is of economic importance. Where surface development is to be permitted, consideration should be given to prior extraction of the minerals present.

105. In the NPPF, paragraph 203 notes the importance of making best use of minerals, to secure their long-term conservation, and paragraph 205 requires the benefits of mineral extraction to be given great weight. Paragraph 204 supports the safeguarding of resources of local and national importance, but makes it clear that there is no presumption that such resources must be worked. The same paragraph also supports prior extraction, where this is practical and environmentally feasible. Within safeguarded areas, paragraph 206 states that other development should not normally be permitted if this would constrain any future mineral working.

Economic importance of the appeal site minerals

Countywide supply and demand

106. Across Essex as a whole, the EMP seeks to provide for a supply of up to 4.31 million tonnes of sand and gravel per annum (mtpa), over the plan period to 2029. This target is intended to address not only the county's own needs, but also continuing exports to London and other adjoining areas.
107. Against this target figure, the landbank of permitted sand and gravel sites, as measured by the Minerals Authority, is said to be currently in the region of 8.15 years' worth, plus one further large application pending, which is expected to boost this to over 9 years. If all other designated Preferred and Reserve sites are taken into account, on the Authority's own figures, the available supply of increases to 12.27 years. Based on the EMP target of 4.31 mtpa, this equates to over 52 million tonnes of aggregates which are expected to become available, without needing any further allocations or windfall sites.
108. Comparing the EMP target rate with the volume of actual demand, on the Mineral Authority's evidence, the average sales of sand and gravel in the county over the last 10 years has been 3.13 mtpa. At this slightly lower rate, the landbank of permitted sites would last 11.2 years, and with the Preferred and Reserve sites added, this would become nearly 17 years.
109. Although this landbank includes both permitted and designated sites, it does not include the MSAs. When these are taken into account, it is agreed that the county's sand and gravel deposits amount to around 110,000 hectares. On the appellants' evidence, the overall volume of aggregates within these safeguarded sites is estimated at 9.2 billion tonnes. I appreciate that this figure is necessarily a broad-brush one, being based on geological mapping with limited sampling, and it does not necessarily take account of all recent developments. There is also no certainty that all of the mineral resources within the MSAs are necessarily workable. But in terms of the broad order of magnitude, I see no reason to doubt that the overall tonnage of sand and gravel within the MSAs is likely to run into the billions.

⁸ Defined in the NPPF Glossary as "*Minerals which are necessary to meet society's needs, including aggregates...*"

110. In general terms, I accept that the rate of housing and other development is likely to need to increase, if delivery is to match current development plan expectations and longer term needs. But the target rate of 4.31 mtpa in the existing EMP already allows for an increase of up to about 37% over the current annual demand of 3.13 mtpa. I appreciate that the 10-year period on which the average sales figure is based would have included the aftermath of the 2008 recession. But it must also have included much of the relatively buoyant period that followed later in the 2010s. Realistically, any 10-year period, past or future, is likely to include both peaks and troughs.
111. In addition, the EMP also seeks in the future to boost the role of other alternatives, such as marine-won, secondary or recycled aggregates, and substitute materials. Any increase in these sources would be over and above the quoted landbank, and would reduce reliance on land-won minerals.
112. It is not disputed by any party that Essex is a county where sand and gravel are found in relative abundance. None of the evidence before me suggests a need for any major increase in the current rate of production in the foreseeable future.

Quantity of mineral at the appeal site

113. Although the appeal site is over 10 ha in total, its maximum potentially workable area is considerably less than this, because of the proximity of existing residential properties in Maldon Road and Peakes Close. In these circumstances, EMP paragraph 5.20 recommends a buffer zone of 100m in width. To my mind, this standard requirement seems the most logical starting point for considering the present site, having regard to the potential issues of land stability, as well as other environmental impacts. I also note that a buffer of this width was included in the scoping discussions held in early 2020.
114. I accept that there may have been cases elsewhere in Essex where narrower buffer zones have been accepted, but these would appear to have been exceptions, based on site-specific considerations. For the purposes of the present appeal, it would not be appropriate to assume that a similar exception would be acceptable here. In the light of all the evidence, I see no basis at this stage for assuming a buffer of anything less than 100m. Given the configuration of the adjoining development, a buffer zone of this width, as shown in the appellants' evidence, effectively rules out any mineral extraction over almost half of the site.
115. On this basis, the volume of workable sand and gravel at the site, net of overburden and interburden, is now calculated by the appellants⁹ as 151,132 cu m, and the resulting saleable (or useable) quantity, after removing fines, is calculated as 216,201 tonnes. These figures are lower than the ones used in some of the appellants' earlier submissions, which suggested a saleable resource of either 303,000 or 350,169 tonnes. The differences between these figures have been explained, and I see no reason to doubt the accuracy of the most recent evidence. But nevertheless, a good deal of the evidence from both sides is based on the earlier

⁹ Mr Anchor's first rebuttal proof, para 4.3

assessments. I also note the alternative calculations put forward by the Council's witness, leading to a figure of 294,000 tonnes. For the sake of robustness, I have assumed that the workable volume is likely to be somewhere between 216,000 tonnes and 350,000 tonnes.

116. Looked at in isolation, this available tonnage of mineral at the appeal site is not insubstantial. But viewed in the context of the many millions of tons in the already permitted and designated sites, or the billions of tonnes in the MSAs as a whole, the quantities take on a somewhat different perspective. Even if only the permissions landbank of 8.15 years is taken into account, the contribution that the appeal site could add, even at the upper-end figure of 350,000 tonnes, would be less than one per cent. On any other basis, the percentage contribution would be still lower.
117. I acknowledge that the overall supply of minerals is finite, and an abundance does not preclude the need for good husbandry. The NPPF is clear as to the weight to be given to their conservation. But it does not follow from this that each and every site will be of equal importance, regardless of the quantity involved. In the particular circumstances of Essex, Policy S8 makes it clear that the smallest sites, below 5ha, are not to be regarded as economically significant, and that above this threshold, economic significance is to be judged on a site-by-site basis, through the site-specific MRA; indeed, this is the very reason why an MRA is required.
118. In the present case, although the appeal site as a whole clearly exceeds the 5ha threshold, its workable area appears to do so only marginally. In the context of Essex's abundant supply of sand and gravel, the size of the existing landbank, and the current rate of demand, the quantity of potentially workable aggregate indicated by the MRA does not appear to be of any great economic significance.

Viability of extraction

119. On the appellants' financial modelling, a stand-alone mineral operation at the appeal site, with on-site processing ('Scenario 1'), followed by backfilling with ordinary inert material suitable for restoration to agricultural use, would make a loss of around £2.7m or thereabouts. If the site were worked as a satellite operation, with processing mainly off-site ('Scenario 2'), the loss could be reduced significantly, but would still be over £1m.
120. These figures are challenged mainly only on the basis that the quantity of mineral could be increased by reducing the buffer. However, for the reasons already given, I do not consider that this is a matter that can properly be pursued through the present appeal. In any event, there is no clear evidence as to how this would turn a loss into a profit. Other than this, the Council's case against Scenarios 1 and 2 relies heavily on reported conversations with an unnamed local operator who is said to have expressed interest in working the site. But this amounts only to hearsay. Without any direct evidence from the operator in question, these submissions carry no weight.
121. The appellants' viability appraisal is sufficiently detailed to show that the exercise has been tackled with a reasonable degree of thoroughness. There is little by way of sensitivity analysis, but given the scale of the projected losses, it seems unlikely that any minor 'tweaks' to the assumptions would

greatly change the outcome. And in any event, most of the assumptions are substantially unchallenged. Based on the evidence before me, I see no reason to doubt that the viability picture presented by the appellants is broadly accurate, and therefore that mineral extraction at the appeal site, as a stand-alone operation, is unlikely to be a worthwhile proposition. It follows that, in the absence of any other associated development, such as the housing now proposed, there is little realistic prospect that the minerals on the site would ever be worked.

122. This situation is therefore similar in effect to that in the appeal relating to land at Silver End, Braintree¹⁰, where the Inspector concluded that the proposed development was unlikely to constrain the future use of the site for mineral extraction, because extraction was unlikely to ever happen anyway. I consider that the same logic is applicable to the present appeal.
123. I have given careful consideration to the Council's view that the viability of mineral extraction at the site should be looked at not only as a stand-alone operation, but also in the context of the overall development, including the proposed housing. I accept that this approach might be relevant to assessing the possibilities for prior extraction. But, in the context of Policy S8, that seems to me to be a separate exercise from the question of whether the particular mineral resource is of economic importance. To my mind, the latter question is one that requires to be judged on its own merits. Given that the EMP is an adopted, locally based plan, which post-dates the 2012 NPPF, I see no reason to depart from this approach.
124. The lack of any evidence that mineral extraction would be a viable option reinforces my view that the resources at the appeal site cannot be regarded as economically significant.

Prior extraction

125. Notwithstanding the above, I have given consideration to the evidence on both sides regarding prior extraction. There is no disagreement that the principal test in this respect is whether prior extraction would be practical or environmentally feasible.
126. From the evidence, the technical issues raised by prior extraction appear to be as follows. The appeal site lies within an area where the water table is relatively close to the surface. The sand and gravel deposits present extend well below that level. Therefore, for housing development to take place, the excavated area would have to be backfilled to create a new, stable development platform, at or close to the original ground levels. Dewatering would be needed, not just during the mineral extraction phase, but also during backfilling and compaction. The new development platform would have to meet specialised engineering requirements, as to the nature of the fill material and the method of compaction, in order to provide adequate load-bearing capacity and long-term protection against either collapse or heave, following groundwater recharge. Ground monitoring would need to be carried out for a period of years after this before any development could begin. Piled foundations would be likely, possibly up to a depth of 20m. The surface water drainage system would need to be specially designed, to allow for the lower infiltration and attenuation of the compacted backfill.

¹⁰ APP/Z1510

127. It is not disputed that these required measures are technically feasible. On the appellants' evidence, they would add in total around £9.4m of costs to the overall development, but this would be partly offset by the expected revenue of £2m from the prior-extracted mineral, thus reducing the net additional costs to £7.4m ('Scenario 3'). The proposed residential development would be expected to generate substantial capital receipts, through the developer's profit on house sales and the enhanced land value that would be realised by the landowner. When these are taken into account, there is no evidence that the extra costs of extracting the site's minerals could not be borne by the development as a whole.
128. In principle, I accept that this approach, advocated by the Minerals Authority, is not without merit. I have no doubt that there will be some cases where the costs of prior extraction are not seen as prohibitive. In such cases, even though the minerals involved may not be of national or local importance, it may well suit the interests of all parties to treat prior extraction as a planning benefit, securing the recovery of smaller pockets of minerals that would otherwise remain in the ground.
129. However, the present appeal site does not seem to me to fall within that category. The £9.4m of additional costs that would be incurred on prior extraction would not represent simply a reduced profit for the developer and landowner; it would also represent the opportunity cost of the goods, materials and services which would need to be utilised in that cause. Amongst other things, these would include high-quality, high-value engineering fill material, which otherwise would be in high demand for other specialised uses. They would also include the materials, equipment and expertise needed for piled foundations and non-standard drainage systems. And they would include the holding costs of the sunk capital tied up in the project for several years, while backfilling, engineering works and ground monitoring took place. To my mind, expending goods, materials and services in this way, worth in excess of £9m, in order to extract minerals with an economic value of only around £2m, would not only be grossly disproportionate, it would also be wasteful and unsustainable.
130. In the light of this conclusion, it is not necessary for me to go on to consider in detail the environmental issues that prior extraction would raise. Suffice to say, those issues would in my view be substantial. In particular, this is because of the relationship of the site to the existing houses in Peakes Close. If mineral extraction were required, those properties would be left isolated on a narrow spur of land at existing ground level, surrounded on three sides by deep excavations. That would clearly be an unacceptable situation. It is difficult to see how the impact of prior extraction on these properties could be justified.
131. Having regard to the evidence before me, it is evident that in this case prior extraction is neither practical nor environmentally feasible.

Conclusions as to the effects on minerals

132. For the reasons set out above, I conclude that the sand and gravel resources at the site are not economically significant, due to their relatively small size and value. In addition, mineral extraction would be unlikely to be viable as a stand-alone operation, and therefore the development now proposed would not have the effect of sterilising any mineral resources.

133. Prior extraction would not appear to be either practical or environmentally feasible, and in this case any requirement to that effect would not be justified in any event.
134. In all these respects, no conflict would arise with either EMP Policy S8 or the relevant provisions of the NPPF.

Other matters

Benefits of the development

135. The scheme would provide up to 77 dwellings, 30% of the total, as affordable housing, secured through the S.106 undertaking. This level of provision, matching the requirement proposed in the emerging draft LP, would exceed the existing policy requirement in Policy H4 of the adopted CS. As such, it would be a significant benefit. The provision of the remaining 178 units of market-priced housing would also be of some benefit, in terms of widening choice, but since a 5-year supply has been demonstrated, this carries considerably less weight.
136. The development would be likely to create over 150 full-time equivalent jobs during the construction period. Although these would not be permanent, they could potentially last for over 2 years. Household expenditure of around £4m p.a. would be generated, much of which would be likely to be spent locally. The local economy would also benefit from New Homes Bonus and Council Tax receipts. Together, these economic benefits would be significant. None would be unique to the present proposals, but that does not make them any less valuable.
137. The scheme would provide nearly 3ha of on-site open space, including a play area and links to the existing rural public footpath network. The undertaking ensures that the open space would be available to the public, and provides for its long term management. In my view the location is reasonably accessible, and these facilities would therefore represent a significant benefit, carrying moderate weight.
138. Through the suggested conditions, the scheme would deliver various minor transport-related measures, including improvements to the Station Road junction, pedestrian refuges at that junction and at the site entrance, a cycleway alongside Maldon Road, and bus stop enhancements. These would have varying degrees of benefit for existing road users, but in most cases the main beneficiaries would be the residents of the development itself. Overall, there would be a modest public benefit from these items.
139. The potential for ecological enhancements, to be secured by condition, counts as a minor benefit, carrying limited weight.
140. The proposed drop-off car park for Tiptree Heath School could potentially be a substantial benefit. However, this facility is not included in the undertaking. As indicated to the parties previously, I do not consider that reliance on a condition alone would be satisfactory, because the need for the car park does not arise from the development now proposed. Such a condition would therefore fail the test of necessity. In addition, it is evident that little thought has been given to the arrangements that would be needed in terms of the long term ownership and management, to ensure that the facility served its intended purpose. This further reduces my confidence as

to whether the potential benefits would be fully realised. For these reasons, I give the proposed car park little weight.

141. Through the undertaking, the scheme reserves part of the site, for a period of up to 10 years, for a possible future roundabout at the main site entrance. The purpose of this is to allow the spine road through the development to serve as the first phase of a possible new link road, bypassing Tiptree on its western side. The possibility of such a road has apparently been considered in the past as one of a number of options for managing through traffic. However, the draft TNP currently gives preference to a different route, to the north of the town. The Highway Authority appears to have no current proposals and no firm view on the matter. To my mind there is no clear evidence, either as to whether a western link road is likely to be required, or what route it might take, or to what extent the appeal proposal would facilitate it. To the extent that it would leave all options open for the time being, albeit only for a finite period, the reservation of land for this purpose would be a minor benefit. But in view of the many uncertainties, this is a benefit that commands very limited weight.

Other obligations in the undertaking

142. In addition to the affordable housing, the on-site open space, and the land reservation referred to above, the undertaking also provides for various financial contributions. These are directed to purposes associated with education, healthcare, community facilities, archaeology, off-site open space and recreation, and protected habitats. In the light of the evidence presented, I accept that all of these are necessary, relevant, and reasonable in scale and kind. I have therefore taken them into account.
143. However, all of these contributions are directed primarily at mitigating the development's own impacts. They therefore carry only neutral weight in the planning balance.

Other matters raised by objectors

144. A great many of the grounds of objection raised by local residents and organisations relate to the main issues which have already been dealt with above. These need not be repeated here. But I have also considered all the other matters raised.
145. Amongst those which have not been covered elsewhere, I note in particular the objections raised with regard to traffic congestion, road safety (including school children), the capacity of local schools and health facilities, car parking, wildlife, air pollution, drainage and sewers, water pressure, and noise and dust during construction. Whilst I appreciate the sincere concerns behind all of these representations, in the light of the evidence available, I do not find any of these matters sufficiently clear-cut as to justify refusal of planning permission in their own right.
146. In view of the conclusions that I have reached on the main issues, it is not necessary or expedient within this decision to go into further detail on these other matters.

The overall planning balance

147. For the reasons explained in this decision, the proposed development would conflict with CS Policy ENV1, due to its location in the countryside, and also due to its adverse impact on the local landscape and townscape in causing coalescence between Tiptree and Tiptree Heath. Having regard to the issues considered in this decision, Policy ENV1 is the most important policy in the appeal, and as a result of these conflicts, the proposed scheme fails to accord with the development plan. Section 38(6) of the Planning and Compulsory Purchase Act 2004¹¹ requires that decisions are taken in accordance with the development plan, unless outweighed by other material considerations.
148. The benefits of the development are set out above. These include the provision of market and affordable housing, construction employment and increased local spending, on-site open space, highway improvements and minor ecological enhancements. These benefits all carry at least some weight, including significant weight to the affordable housing and economic benefits. But nevertheless, the presumption in S.38(6) favours the development plan. The benefits identified are all very much run-of-the-mill matters. Even when they are all added together, there is no basis for considering them to be of such weight as to outweigh that presumption.
149. The NPPF is also a relevant material consideration, and paragraph 11 allows for a 'tilted balance' in circumstances where the most important development plan policies are out of date. However, that is not the case here, because a 5-year housing supply has been demonstrated, and I have found Policy ENV1 to be generally consistent with relevant national policies. This finding is different from the Barbrook Lane decision, because the 5-year supply situation has changed. Consequently, the tilted balance does not apply. But even if it did, I consider that the harm to the area's character and appearance would significantly and demonstrably outweigh the benefits identified.
150. The Council's objections in relation to prematurity and conflict with the emerging local and neighbourhood plans, and in relation to mineral sterilisation, have not been substantiated, and these carry no weight in my decision. All other matters raised weigh neutrally. None of these changes the overall planning balance as set out above.

Conclusions

151. Having regard to the above planning balance, the conflict with the development plan is not outweighed. The appeal must therefore fail.

J Felgate

INSPECTOR

¹¹ Section 38(6) of the Planning and Compulsory Purchase Act 2004

DOCUMENTS SUBMITTED DURING THE INQUIRY

THE PLANNING INSPECTORATE

- PINS 1 Case management call Agenda and Preliminary Observations, 23 April 2020
- PINS 2 Post-conference Note and Directions, 4 May 2020
- PINS 3 Letter to Rt Hon Priti Patel MP, dated 20 May 2020
- PINS 4 PINS Screening Direction letter, 9 June 2020
- PINS 5 Inspector's Questions (1): planning policy, 11 June 2020
- PINS 6 Inspector's Questions (2): housing land supply, 11 June 2020
- PINS 7 Inspector's Questions (3): planning balance, 11 June 2020
- PINS 8 Inspector's Questions (4): landscape and visual impact, 11 June 2020
- PINS 9 Inspector's Questions (5): minerals, 15 June 2020
- PINS 10 Inspector's Questions (6): conditions, 16 June 2020
- PINS 11 Email dated 15 June 2020, re Inspector's Questions and site visit
- PINS 12 Email dated 16 June 2020, re the draft Undertaking
- PINS 13 Email dated 22 June 2020, re the draft Undertaking
- PINS 14 Email dated 25 June 2020, re draft condition 24
- PINS 15 Inspector's Further Questions, 2 July 2020
- PINS 16 Review of Progress and Proposed Further Programme, 2 July 2020
- PINS 17 Letter to Tiptree PC dated 21 July 2020, refusing request for recovery by SoS

THE COUNCIL

- COU 1 Statement of Case, 15 April 2020
- COU 2 Bundle of supporting documents (with Statement of Case)
- COU 3 Position Statement (for case management conference call), 29 April 2020
- COU 4 Karen Syrett (Housing land supply) – Proof, with Appendices 1-6
- COU 5 Karen Syrett – Rebuttal proof
- COU 6 Catherine Bailey (Landscape and visual) - Proof
- COU 7 Catherine Bailey – Rebuttal proof
- COU 8 Susan Jackson (Obligations and planning balance) – proof, with Appendices 1-2
- COU 9 Susan Jackson – Summary proof
- COU 10 Sandra Scott (Planning policy) - Proof
- COU 11 Sandra Scott – Appendices 1-3
- COU 12 Sandra Scott – Summary proof
- COU 13 Sandra Scott – Rebuttal and Update, with Appendix 1
- COU 14 Philip Dash, ECC (Minerals) – Proof, plus MRA Review by Matthews & Sons
- COU 15 Philip Dash – Rebuttal proof, with Appendix 1
- COU 16 Philip Dash – Further rebuttal, plus 'Review and Response' by Matthews & Son
- COU 17 Response to Inspector's Questions Set 1 – S Scott
- COU 18 Response to Inspector's Questions Set 2 – K Syrett (with attachments)
- COU 19 Response to Inspector's Questions Set 3 – S Jackson
- COU 20 Response to Inspector's Questions Set 4 – C Bailey (with attachments)
- COU 21 Response to Inspector's Questions Set 5 – P Dash (with attachments)
- COU 22 Response to Inspector's Questions Set 6 – S Jackson
- COU 23 Email dated 23 June 2020 (with attachments from S Jackson and ECC), re UU
- COU 24 Email dated 29 June 2020, with ECC Highways response to Inspector's question
- COU 25 Replies to Inspector's Further Questions, 9 July 2020
- COU 26 Email dated 14 July 2020, agreeing to proceed to closing submissions
- COU 27 Email dated 20 July 2020: update on Local Plan
- COU 28 Email dated 21 July 2020: update on TNP and housing sites
- COU 29 Closing submissions, received 23 July 2020

THE APPELLANTS

APP 1	Statement of Case (with Appendices 1-3), 28 February 2020
APP 2	Note for case management conference, 30 April 2020
APP 3	Geoff Armstrong (Planning policy and housing supply) – Proof
APP 4	Geoff Armstrong - Appendices 1-7
APP 5	Geoff Armstrong - Rebuttal proof
APP 6	Geoff Armstrong - Rebuttal Appendices GA1R – GA3R
APP 7	Richard Fox (Landscape and visual) – Proof
APP 8	Richard Fox - Appendices 1-4
APP 9	Richard Fox - Rebuttal proof, with Appendices 1-2
APP 10	David Anchor (Minerals) - Proof
APP 11	David Anchor – Appendices A-C
APP 12	David Anchor – Rebuttal proof, with Appendices A-D
APP 13	David Anchor – Further rebuttal, with Appendices A-C
APP 14	Response to Inspector’s Questions Sets 1, 2 & 3 – G Armstrong
APP 15	Response to Inspector’s Questions Set 4 – R Fox (with attachments)
APP 16	Response to Inspector’s Questions Set 5 – D Anchor
APP 17	Response to Inspector’s Questions Set 6
APP 18	Email 29 June 2020 re UU and condition 24
APP 19	Response to Inspector’s Further Questions, 9 July 2020
APP 20	Email dated 13 July 2020, agreeing to proceed to closing submissions
APP 21	Executed Unilateral Undertaking, dated 16 July 2020
APP 22	Closing submissions, received 24 July 2020

OTHER INTERESTED PARTIES

The Rt Hon Priti Patel MP

MP 1	Letter dated 13 May 2020 (with attached emails from T Stockford and T Bond)
MP 2	Letter dated 15 May 2020 (with attached email from M Garland)

Tiptree Parish Council and Neighbourhood Plan Steering Group

TPC 1	Objection dated 11 April 2020, submitted by J Greenwood
TPC 2	Submission dated 29 April 2020, by L Mendham and Cllr C Bigg
TPC 3	Submission dated 19 May 2020 by J Greenwood (+ ‘Docs 1-3’ and attachments)
TPC 4	Submission dated 28 May 2020, from J Greenwood (+ ‘Doc 4’ Rebuttal)
TPC 5	Representation/query dated 26 May 2020, by J Greenwood (+ enclosure)
TPC 6	Further submission dated 1 June 2020, from J Greenwood
TPC 7	Recovery request, dated 15 July 2020, from R Williams

Other organisations

ORG 1	CPRE Essex, letter from <u>D.Green</u> dated 30 May 2020
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Colchester Borough Council Members

MEM 1	Cllr J Bunney, 14 May 2020 (forwarded by S Greenwood)
MEM 2	Cllr B Wood, 14 May 2020

Members of the public

15 letters in response to first public consultation (17 March – 15 April 2020)

205 letters (from 202 individuals), in response to second public consultation (15 May - 2 June 2020)

GENERAL INQUIRY DOCUMENTS

- GEN 1 Statement of Common Ground (Planning) 24 April 2020
- GEN 2 Statement of Common Ground (Highway Matters) 8 April 2020
- GEN 3 Statement of Common Ground (Housing Land Supply) 12 May 2020
- GEN 4 Statement of Common Ground (Landscape), 12 May 2020
- GEN 5 Draft conditions (received 28 April 2020)

CORE DOCUMENTS

Application Documents

- CD 1.1 Application Form
- CD 1.2 Application Cover Letter
- CD 1.3 Planning Statement
- CD 1.4 Environmental Impact Assessment Screening Request
- CD 1.5 Location Plan
- CD 1.6 Development Framework Plan
- CD 1.7 Landscape and Visual Impact Assessment
- CD 1.8 Transport Assessment Part 1
- CD 1.8a Transport Assessment Part 2
- CD 1.9 Residential Travel Plan Jul 2019
- CD 1.10 Arboricultural Impact Assessment
- CD 1.11 Flood Risk Assessment Jul 2019
- CD 1.12 Utilities Assessment Part 1
- CD 1.12a Utilities Assessment Part 2
- CD 1.12b Utilities Assessment Part 3
- CD 1.12c Utilities Assessment Part 4
- CD 1.13 Health Impact Assessment
- CD 1.14 Interim Ecological impact Assessment September 2019
- CD 1.15 Energy Statement June 2019
- CD 1.16 Noise Assessment July 2019
- CD 1.17 Air Quality Assessment July 2019
- CD 1.18 Archaeological Desk Based Assessment Feb 2017
- CD 1.19 Minerals Resource Assessment Part 1 Jul 2019
- CD 1.19a Minerals Resource Assessment Part 2 Jul 2019
- CD 1.19b Minerals Resource Assessment Part 3 Jul 2019
- CD 1.20 Shadow Habitats Regulations Assessment
- CD 1.21 Geophysical Survey May 2017
- CD 1.22 Geo-Environmental Site Assessment July 2019 Part 1
- CD 1.22a Geo-Environmental Site Assessment July 2019 Part 2
- CD 1.22b Geo-Environmental Site Assessment July 2019 Part 3
- CD 1.22c Geo-Environmental Site Assessment July 2019 Part 4
- CD 1.23 Preliminary Ecological Appraisal
- CD 1.24 Agricultural Land Classification Report and Letter
- CD 1.25 Statement of Community Involvement June 2019
- CD 1.26 Strategy Document V4 July 2019
- CD 1.27 Written Scheme of Investigation
- CD 1.28 Built Heritage Assessment 15.10.19
- CD 1.29 Letter in response to Planning Policy Consultation Response
- CD 1.30 Letter in response to agricultural Land classification and landscape Comments
- CD 1.31 Landscape Consultation Comments

Development Plan Documents

- CD 2.1 Colchester Borough Council Core Strategy 2008, selected policies revised July 201
- CD 2.2 Colchester Borough Council Site Allocations DPD 2010
- CD 2.3 Colchester Borough Council Development Policies DPD 2010, revised July 2014
- CD 2.4 Colchester Borough Council Tiptree Proposals Map 2010

- CD 2.5 Essex County Council - Essex Minerals Local Plan 2014
- CD 2.6 Colchester Borough Council Strategic Land Availability Assessment June 2017
- CD 2.7 Report on Examination to Core Strategy Dev Plan Oct 2008

National Planning Policy

- CD 3.1 The Revised National Planning Policy Framework 2019

Emerging Local Plan

- CD 4.1 Colchester Borough Council Emerging Local Plan Publication Draft June 2017
- CD 4.2 Tiptree Neighbourhood Plan Regulation 16 edition
- CD 4.2a Tiptree Neighbourhood Plan Results from Survey of Residents
- CD 4.2b Tiptree Neighbourhood Plan Questionnaire Feedback Results
- CD 4.3 Sustainability Appraisal Part 2 Colchester Local Plan, July 2016
- CD 4.4 Settlement Boundary Review 2017
- CD 4.5 Inspector's Section 1 Post Hearing Letter to NEAs 8 June 2018
- CD 4.6 Inspector's Section 1 Supplementary Post Hearing Letter to NEAs 27 June 2018
- CD 4.7 Inspector's Section 1 Response Letter to NEA 2 August 2018
- CD 4.8 Colchester Borough Council Emerging Local Plan Publication Draft: Tiptree Policies Map June 2017
- CD 4.9 Tiptree NP SEA Appendix 3 Feb 2020
- CD 4.10 Tiptree NP SEA Report Reg 16 Feb 2020

Evidence Base

- CD 5.1 Publication Draft Sustainability Appraisal Part 2 Colchester Local Plan, June 2017
- CD 5.2 Colchester Borough Council Annual Monitoring Reports
- CD 5.3 Colchester Borough Council Annual Housing Land Position Statement 2020
- CD 5.4 Colchester Borough Council Strategic Housing Market Assessment
- CD 5.5 OAN & further Peter Brett work
- CD 5.6 Affordable Housing SPD August 2011
- CD 5.7 Provision of Community Facilities SPD September 2009 (revised July 2013)
- CD 5.8 Provision of Open Space, Sport and Recreation Facilities SPD July 2006
- CD 5.9 Managing Archaeology in Development (Adopted 2015)
- CD 5.10 Developing a Landscape for the Future SPD 2013
- CD 5.11 Essex Coast Recreational disturbance Avoidance & Mitigation Strategy (RAMS) Habitats Regulations Assessment Strategy 2018-2038
- CD 5.12 Essex County Council: Developers' Guide to Infrastructure Contributions, 2016
- CD 5.13 NHS East Essex Health Impact Assessment
- CD 5.14 Colchester Infrastructure Development Plan June 2017
- CD 5.15 SoCG - Housing Land Supply Final Bloor Homes & Colchester Borough Council

Landscape

- CD 6.1 The Conservation of Habitat and Species Regulations 2017
- CD 6.2 Colchester Borough Landscape Character Assessment, Chris Blandford Associates, November 2005 (Extracts)
- CD 6.3 Essex Landscape Character Assessment 2003
- CD 6.4 Colchester Borough Local Wildlife Site Review 2015 Final Report November 2017
- CD 6.5 Colchester Borough Historic Environment Characterisation Project 2009,
- CD 6.6 Guidelines for Landscape and Visual Impact Assessment (3rd edition) (GLVIA3)
- CD 6.7 Townscape Character Assessments – Colchester, Tiptree, West Mersea & Wivenho
- CD 6.8 Landscape Institute Technical Guidance Note 06/19

Appeal Decisions in Colchester Borough

- CD 7.1 Appeal Decision APP/Z1510/W/18/3207509 - Land off Colchester Road, Bures Hamlet, Essex, August 2019
- CD 7.2 Appeal Decision APP/A1530/W/19/3230908 – Land adjacent to the Red Lion Public House, 130 Coggeshall Road, Marks Tey, November 2019
- CD 7.3 Appeal Decision APP/A1530/W/17/3178656 – Bakers Lane, Braiswick, Colchester, March 2018
- CD 7.4 Appeal Decision APP/A1530/W/18/3207626 - Colchester Road West Bergholt, Aug 2019
- CD 7.5 Appeal Decision APP/A1530/W/19/3231964 - Land at Queen Street Colchester December 2019.
- CD 7.6 Appeal Decision APP/A1530/W/19/3223010 – Barbrook Lane, Tiptree, Colchester April 2020

Other Relevant Appeals and Court Judgements

- CD 8.1 Gladman Developments Limited v. SSHCLG & Corby BC & Uttlesford DC: [2020] EWHC 518 (Admin)
- CD 8.2 APP/L3815/W/15/3004052 Sunley Estates Ltd v SSHCLG
- CD 8.3 APP/X0360/W/19/238048 Land north of Nine Mile Ride, Finchampstead

Minerals

- CD 9.1 Figure 1 Illustrative Site Layout Plan 2019
- CD 9.2 The Planning and Design of Aggregate Quarries for Non Agricultural Afteruse 2006
- CD 9.3 MPA POS Minerals Safeguarding Practice Guidance
- CD 9.4 Register Title EX806468
- CD 9.5 Register Title EX651731
- CD 9.6 Mineral Safeguarding Good Practice Advice
- CD 9.7 Review of Updated Mineral Resource Assessment April 2020
- CD 9.8 RSK Environment Letter to ECC 21 11 2019
- CD 9.9 Bloor Homes Updated Minerals Resource Assessment 1920114 (03)

Tiptree Neighbourhood Plan

Report of Examination

Report to Colchester Borough Council

by the Independent Examiner:

John Parmiter FRICS MRTPI



9 October 2020

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Summary

1. From my examination of the submitted Tiptree Neighbourhood Plan, the supporting documents, and taking into account all the representations made, I have concluded that the Neighbourhood Plan should NOT proceed to a referendum.
2. I have concluded that the plan does NOT meet the Basic Conditions. In summary, the Basic Conditions are:
 - a. having regard to national policies and advice contained in guidance issued by the Secretary of State it is appropriate to make the neighbourhood plan.
 - b. having special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest that it possesses, it is appropriate to make the order. This applies only to Orders.
 - c. having special regard to the desirability of preserving or enhancing the character or appearance of any conservation area, it is appropriate to make the order. This applies only to Orders.
 - d. the making of the neighbourhood plan contributes to the achievement of sustainable development.
 - e. the making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area.
 - f. the making of the neighbourhood plan does not breach, and is otherwise compatible with, EU obligations.
 - g. prescribed conditions are met in relation to the plan and prescribed matters have been complied with in connection with the proposal for the plan.
3. I have concluded that the neighbourhood plan would meet certain legal requirements in that:
 - It has been prepared and submitted for examination by a qualifying body;
 - It has been prepared for an area properly designated;
 - It does not relate to “excluded development”;
 - It specifies the period to which it has effect – to 2033; and
 - The policies relate to the development and use of land for a designated neighbourhood area.
4. However, as the plan covers one neighbouring plan area, by extending a proposal into the neighbouring parish, it does not meet the legal requirements.

1. Introduction

- 1.1 I am appointed by Colchester Borough Council, with the support of Tiptree Parish Council (the Qualifying Body), to undertake an independent examination of the Tiptree Neighbourhood Plan, as submitted for examination.
- 1.2 I am an independent planning and development professional of 40 years standing and a member of NPIERS' Panel of Independent Examiners. I am independent of any local connections and have no conflicts of interests.

The Scope of the Examination

- 1.3 It is the role of the Independent Examiner to consider whether making the plan meets the Basic Conditions. These are:
 - a. having regard to national policies and advice contained in guidance issued by the Secretary of State it is appropriate to make the neighbourhood plan.
 - b. having special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest that it possesses, it is appropriate to make the order. This applies only to Orders.
 - c. having special regard to the desirability of preserving or enhancing the character or appearance of any conservation area, it is appropriate to make the order. This applies only to Orders.
 - d. the making of the neighbourhood plan contributes to the achievement of sustainable development.
 - e. the making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area).
 - f. the making of the neighbourhood plan does not breach, and is otherwise compatible with, EU obligations.
 - g. prescribed conditions are met in relation to plan and prescribed matters have been complied with in connection with the proposal for the neighbourhood plan.
- 1.4 Regulations also require that the Neighbourhood Plan should not be likely to have a significant effect on a European Site or a European Offshore Marine Site either alone or in combination with other plans or projects.
- 1.5 In examining the Plan I am also required to establish if the plan complies with certain legal requirements; in summary, they are whether it:
 - Has been prepared and submitted for examination by a qualifying body;

- Has been prepared for an area that has been properly designated;
- Meets the requirements that they must not include excluded development;
- Relates to one Neighbourhood Area; and
- Relates to the development and use of land.

1.6 Finally, as independent Examiner, I must make one of the following recommendations in relation to the Plan proceeding to a Referendum:

- a) that it should proceed to Referendum on the basis that it meets all legal requirements; or
- b) that, once modified to meet all relevant legal requirements, it should proceed to Referendum; or
- c) that it should not proceed to Referendum on the basis that it does not meet the relevant legal requirements.

1.7 Second, if recommending that the Plan should go forward to Referendum, I am also then required to consider whether or not the Referendum Area should extend beyond the Neighbourhood Designated Area to which the Plan relates.

The Examination process

1.8 I was formally appointed to examine the Neighbourhood Plan in July 2020 and commenced the examination in August. The default position is that neighbourhood plan examinations are conducted by written representations. I have completed the examination from the submitted material. I conducted an unaccompanied site visit. I submitted a draft of this report, for purely fact-checking purposes, on 7th September; the QB and LPA responded on 9th October.

The Examination documents

1.9 In addition to the legal and national policy framework and guidance (principally The Town and Country Planning Acts, Localism Act, Planning and Compulsory Purchase Act, Neighbourhood Planning Act and Regulations, the National Planning Policy Framework, Written Ministerial Statements and the Planning Practice Guidance) together with the development plan, the relevant documents that were furnished to me - and were identified on the Council's website as the neighbourhood plan and its supporting documentation for examination - were:

- Proposed Neighbourhood Plan;
- Map showing Tiptree Neighbourhood Plan Area;
- Basic Conditions Statement;
- Consultation Statement, with 44 appendices;
- Strategic Environmental Assessment Report and 3 appendices; plus Non-Technical Summary;
- Habitat Regulations Assessment Report;

together with:

- 64 responses received under Regulation 16 (referred to later; I was sent 65 but Historic England was listed twice).

1.10 At the time I was sent the representations the Council and Qualifying Body updated me on two matters: a) the current position on the emerging Local Plan (see later); and b) the results of two planning appeals. On 7th April 2020 the Secretary of State allowed an appeal by Gladman Developments for up to 200 dwellings (30% of which to be affordable) on land at Barbrook Lane, outside but adjacent to the eastern settlement boundary in the adopted plan. Subsequently, on 18th August 2020, an appeal by Bloor Homes for 255 dwellings on land off Maldon Road, also located outside of the settlement boundary, was dismissed.

The Qualifying Body and the Designated Area

1.11 Tiptree Parish Council is the Qualifying Body. Colchester Borough Council, as the local planning authority, designated the neighbourhood area in 2015. The Neighbourhood Plan area is contiguous with the boundary of Tiptree parish. The neighbourhood plan has been prepared by the Tiptree Neighbourhood Plan Steering Group under the umbrella of Tiptree Parish Council.

The Neighbourhood Plan Area

1.12 The plan area is focused on the village of Tiptree, which lies on the south facing slopes of the Tiptree ridge, close to the south-west boundary of Colchester Borough, some 15km from the town itself. The village has a long history – which has left its mark on the landscape - though it only really grew in the 1800s. It saw much post-war development as a GLC overspill location; today it has a population of over 9,000. There is a small, detached, cluster of houses, to the south-west, known as Tiptree Heath.

1.13 The plan notes that the village has a high number of key services and community facilities: three supermarkets, community centre, health centre and range of independent shops and cafes and restaurants. There are four primary schools and a secondary school, a leisure centre, a football training ground and four main employment areas, one being the eponymous jam factory. There are regular bus services from Colchester during the day; none by late evening.

1.14 The plan area contains a range of open and recreational spaces, wildlife sites – many of which are owned by the parish council - and Tiptree Heath. There are 23 listed buildings and a number of buildings of local interest.

2. Neighbourhood Plan preparation and public consultation

The Neighbourhood Development Plan

2.1 The document is well presented and easy to follow, comprising fifteen sections (with section 1 as the contents page). Sections 2-4 are introductory

and set the context; section 5 outlines the challenges for Tiptree, the vision for the plan area and the 31 objectives, spread across a number of topic areas. It also contains the Policies Map and a map of the plan's site allocations. These sections set the scene for the policy sections, which follow: Sections 6 to 14, which cover the plan's 17 policies; the final section deals with Non-Policy Actions, which are non-land use matters that the local community advocate. There are no appendices.

- 2.2 At the heart of the plan is the need to plan for 600 homes, arising from strategic policy in the development plan and the emerging local plan. The plan seeks to accommodate these homes on three sites – made up of two site allocations - located to the north and north-west of the village. These three sites are expected to accommodate a new Primary Street – a set of link roads, in a form of a by-pass - so that development can access main routes, taking traffic away from the village (to the A12 and nearby stations, in particular) and so minimising the impacts of traffic passing through the village centre. This is the plan's driving objective and shapes the spatial strategy of the neighbourhood plan. The settlement boundary is drawn around the village and these allocations.
- 2.3 The rest of the plan flows from this spatial strategy and deals with the other issues and challenges of the plan, such as local character and design, movement, the village centre, commercial activity, community infrastructure, the countryside and green spaces, and the historic environment.

Strategic Environmental Assessment (SEA)

- 2.4 The Basic Conditions Statement confirms that: "The Plan and the process under which it was made conforms to the SEA Directive (EU 2001/42/EC) and the Environmental Assessment of Plans and Programmes Regulations 2004 (the Regulations). At an early stage in the development of the Neighbourhood Plan, it was agreed that an SEA would be needed. In May 2019, following a scoping exercise which took on board comments from the statutory bodies (the Environment Agency, Natural England and Historic England), a draft SEA report prepared by Colchester Borough Council was published. This accompanied the publication of the Pre-Submission (Regulation 14) Neighbourhood Plan. The draft SEA report demonstrated that, when considered against alternative options, the draft Neighbourhood Plan would have a number of positive effects and no negative effects. Some mitigation measures were recommended.
- 2.5 Following comments at Regulation 14 stage, the Neighbourhood Plan was amended. This included the mitigation measures recommended in the SEA. The SEA was reviewed and updated as necessary. The overall conclusion was the same, namely that the Tiptree Neighbourhood Plan would not be likely to have any significant environmental effects arising either individually or cumulatively.'

Appropriate Assessment

- 2.6 The Basic Conditions Statement confirms that: "Under Directive 92/43/EEC,

also known as the Habitats Directive, it must be ascertained whether the draft Plan is likely to breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017. Assessments under the regulations are known as Habitats Regulation Assessments ("HRA"). An appropriate assessment ("AA") is required only if the Plan is likely to have significant effects on a European protected species or site. To ascertain whether or not it is necessary to undertake an assessment, a screening process is followed.

2.7 An HRA Screening was undertaken by Colchester Borough Council in February 2020. This reflected consultation with Natural England. It was of the opinion that no planning policies within the Tiptree Neighbourhood Plan except policies TIP13 (Tower End) and TIP14 (Highlands Nursery and Elms Farm), which allocate sites for the development of 625 dwellings, will lead to any adverse effects and can be screened out of further assessment. Colchester Borough Council has separately carried out an appropriate assessment of the Emerging Local Plan (Section 2). This includes a detailed in-combination assessment, which considers the in-combination effects of the Section 2 Local Plan with other neighbourhood plans and other local plans across Essex, on Habitats sites. A Statement of Common Ground signed by Colchester Borough Council and Natural England confirms that Natural England agrees with the conclusion that the Section 2 Local Plan will not lead to adverse effects on the integrity of Habitats sites either alone or in-combination."

2.8 I have some concerns about the SEA, mainly in relation to its treatment of reasonable alternatives and the selection of sites, which I come on to in my Overview section elsewhere.

European Obligations - Human Rights

2.9 I have no reason to believe that making the plan would breach or is incompatible with the European Convention on Human Rights.

Plan period

2.10 The neighbourhood plan clearly states in the Vision (section 5), on the cover and elsewhere that it covers the period to 2033, which is co-terminus with the emerging Local Plan.

Excluded development

2.11 A neighbourhood plan cannot include policies for excluded development, such as minerals and waste. I have concluded that the plan does not do so.

One plan, one designated area

2.12 A neighbourhood plan can only cover one designated neighbourhood area. In this case the Policies Map clearly shows an "indicative route corridor" (elsewhere, as the "missing-link") across land in the adjoining parish. This is replicated on Maps 8.2 and 8.3, the latter being specifically cited in Policy

TIP07. This route is described in various ways in the plan, principally as a Primary Street; the intention being to eventually link up the new “primary streets” that form part of two of the housing sites (though treated as one allocation) in the north.

- 2.13 The plan notes in the supporting text – see page 29, for example – that “... *it is not possible to safeguard the route or plan development in the section of the north of the village that lies outside the parish boundary*”. It goes on to say that: “*Ultimately it is envisaged that this road will be completed by a Messingcum-Inworth Neighbourhood Plan or through the CBC Local Plan.*” I have not, however, seen any evidence that either the neighbouring parish council or the Borough Council have any intention of doing so.
- 2.14 Later, the text explains that: “*The completion of the link is seen as a long-term project which, at best, would come forward towards the end of the NP Plan period*”. Notwithstanding the tentative nature of some of these statements, as the route is shown on the Policies Map and cited in a policy it does not meet a legal requirement as it lies in an adjacent parish.

Non-Land Use Policies

- 2.15 A neighbourhood plan can only include policies that are concerned with the use or development of land. The plan does include, at section 15, under the title Non-Policy Actions, a table of “non-land use issues to be addressed”. The supporting text explains clearly that these are actions, which cannot be resolved by the neighbourhood plan policies. I am satisfied this approach meets the Basic Conditions.

Public consultation and responses to the submitted plan (Regulation 16)

- 2.16 The process of consultation involved a wide range of media and activities, supervised by the Steering Group. These included a website, newsletters and email contacts, Open and Community Consultation Exhibitions, advertising, community events, a Questionnaire, Youth and Schools Surveys and public meetings. The Consultation Statement sets out very fully – too fully given the sheer volume of material in the appendices – all the details of the activities and processes, including the consultation with businesses, local landowners, the local planning authority and other organisations, as well as the efforts to engage hard-to-reach groups.
- 2.17 The Consultation Statement itself is a commendable document. The appendices, however, are unnecessarily long – appendix 40 alone is over 700 pages - and is, in parts, quite impenetrable: one section was simply page after page of random comments with no narrative or explanation. Nevertheless, the document sets out in detail the consultation process followed at the Regulation 14 stage and how the Steering Group responded to representations.
- 2.18 Consultation on the submission version of the neighbourhood plan started to take place on 20th April 2020 for an intended 6-week period. However,

because of the Covid-19 situation, the consultation was withdrawn by the Council due to concerns about the lawfulness of involving the physical inspection of consultation documents. Following further Guidance in May, consultation on the neighbourhood plan recommenced, for a seven-week period, from 20 June to 10 August 2020.

- 2.19 A total of 64 parties made representations to the submitted plan: a significant proportion of the submissions came from local residents, both within the parish and from those in neighbouring areas. These were often concerned with the traffic impact of the scale and location of new developments: those within the village were concerned to avoid increased congestion and other impacts (pollution, noise, effects on heritage assets, for example), while those beyond the village objected to the plan, as they were very concerned about the impact of the extra traffic on routes to the A12, particularly the use of the B1023. I found all these representations illuminating and helpful. Two adjacent parish councils and a local planning authority also raised concerns, specifically about the impact of additional traffic in their area, in the absence of a suitable link to the A12.
- 2.20 A number of statutory consultees such as Historic England, the Forestry Commission and Sport England had no specific comments; though Anglia Water did have comments, as did Natural England, who was consulted on the SEA/HRA process, with some additional comments. Essex County Council had a range of comments, although no reference was made to the new primary streets, a matter I return to later. Colchester Borough Council made no representations.
- 2.21 There were some representations concerning omission sites; and some representations from developers or landowners in support of allocated sites, often with helpful comments on aspects of the policy they supported. A number of the representations submitted by developers outlined significant concerns about the spatial strategy, the SEA process - especially the appraisal of reasonable alternatives (or lack of it) - and the site selection process, all matters I return to later.

3. The Neighbourhood Plan in its planning context

i. National policies and advice

- 3.1 The neighbourhood plan must have regard to national policies and advice, contained in Ministerial Statements and guidance issued by the Secretary of State, and contribute to the achievement of sustainable development. Paragraph 16 of the National Planning Policy Framework (the Framework) sets the scene:

“Plans should:

- a) be prepared with the objective of contributing to the achievement of sustainable development;*
- b) be prepared positively, in a way that is aspirational but deliverable;*

- c) *be shaped by early, proportionate and effective engagement between plan-makers and communities, local organisations, businesses, infrastructure providers and operators and statutory consultees;*
- d) *contain policies that are clearly written and unambiguous, so it is evident how a decision maker should react to development proposals;*
- e) *be accessible through the use of digital tools to assist public involvement and policy presentation; and*
- f) *serve a clear purpose, avoiding unnecessary duplication of policies that apply to a particular area (including policies in this Framework, where relevant)."*

3.2 The Framework then explains, at para 29, in relation to neighbourhood planning that:

"Neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan. Neighbourhood plans should not promote less development than set out in strategic policies for the area, or undermine those strategic policies."

3.3 In relation to achieving appropriate densities, the Framework includes the following, at para 122:

"Planning policies and decisions should support development that makes efficient use of land, taking into account:

- c) *the availability and capacity of infrastructure and services—both existing and proposed – as well as their potential for further improvement and the scope to promote sustainable travel modes that limit future car use;"*

3.4 Planning Policy Guidance includes guidance on the relationship of neighbourhood plans to emerging local plans (I've selected relevant parts to quote, given its length):

"Neighbourhood plans, when brought into force, become part of the development plan for the neighbourhood area. They can be developed before or at the same time as the local planning authority is producing its local plan (or, where applicable, a spatial development strategy is being prepared by an elected Mayor or combined authority).

.....

Although a draft neighbourhood plan or Order is not tested against the policies in an emerging local plan the reasoning and evidence informing the local plan process is likely to be relevant to the consideration of the basic conditions against which a neighbourhood plan is tested.

.....

Where a neighbourhood plan is brought forward before an up-to-date local plan is in place the qualifying body and the local planning authority should discuss and aim to agree the relationship between policies in:

- *the emerging neighbourhood plan*
- *the emerging local plan (or spatial development strategy)*
- *the adopted development plan*

with appropriate regard to national policy and guidance.

...

The local planning authority should work with the qualifying body so that complementary neighbourhood and local plan policies are produced. It is important to minimise any conflicts between policies in the neighbourhood plan and those in the emerging local plan, including housing supply policies. This is because section 38(5) of the Planning and Compulsory Purchase Act 2004 requires that the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan.”

[ID:41-009-20190509]

3.5 Also, Guidance explains that:

“Plans should be prepared positively, in a way that is aspirational but deliverable. Strategic policies in the local plan or spatial development strategy should set out the contributions expected from development. This should include the levels and types of affordable housing required, along with other infrastructure. Neighbourhood plans may also contain policies on the contributions expected from development, but these and any other requirements placed on development should accord with relevant strategic policies and not undermine the deliverability of the neighbourhood plan, local plan or spatial development strategy. Further guidance on viability is available.” [Reference ID: 41-005-20190509]

3.6 The plan must give sufficient clarity to enable a policy to do the development management job it is intended to do; or to have due regard to Guidance. For example, the Guidance explains that:

“A policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications. It should be concise, precise and supported by appropriate evidence. It should be distinct to reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared.” [Ref 41-041-20140306].

3.7 There has to be appropriate evidence to support particular policies, notwithstanding it may express a strong and well-intentioned aspiration or concern of the local community. The Guidance [Ref 41-040-20160211] states:

“While there are prescribed documents that must be submitted with a neighbourhood plan or Order there is no ‘tick box’ list of evidence required for neighbourhood planning. Proportionate, robust evidence should support the choices made and the approach taken. The evidence should be drawn upon to explain succinctly the intention and rationale of the policies in the draft neighbourhood plan or the proposals in an Order.

A local planning authority should share relevant evidence, including that gathered to support its own plan making, with a qualifying body

Neighbourhood plans are not obliged to contain policies addressing all types of development. However, where they do contain policies relevant to housing supply, these policies should take account of latest and up-to-date evidence of housing need.

In particular, where a qualifying body is attempting to identify and meet housing need, a local planning authority should share relevant evidence on housing need gathered to support its own plan-making”.

3.8 The Guidance further explains what a neighbourhood plan should address:

“A neighbourhood plan should support the delivery of strategic policies set out in the local plan or spatial development strategy and should shape and direct development that is outside of those strategic policies (as outlined in paragraph 13 of the revised National Planning Policy Framework). Within this broad context, the specific planning topics that a neighbourhood plan covers is for the local community to determine.

A neighbourhood plan should, however, contain policies for the development and use of land. This is because, if successful at examination and referendum (or where the neighbourhood plan is updated by way of making a material modification to the plan and completes the relevant process), the neighbourhood plan becomes part of the statutory development plan. Applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise (see section 38(6) of the Planning and Compulsory Purchase Act 2004).

Wider community aspirations than those relating to the development and use of land, if set out as part of the plan, would need to be clearly identifiable (for example, set out in a companion document or annex), and it should be made clear in the document that they will not form part of the statutory development plan. (Paragraph: 004 Reference ID: 41-004-20190509. Revision date: 09 05 2019).

3.9 Also, in relation to Infrastructure considerations:

“A qualifying body may wish to consider what infrastructure needs to be provided in their neighbourhood area from the earliest stages of plan-making (as set out in paragraph 102 of the National Planning Policy Framework) alongside development such as homes, shops or offices. Infrastructure is needed to support development and ensure that a neighbourhood can grow in

a sustainable way.

The following may be important considerations for a qualifying body to consider when addressing infrastructure in a neighbourhood plan:

- *what additional infrastructure may be needed to enable development proposed in a neighbourhood plan to be delivered in a sustainable way*
- *how any additional infrastructure requirements might be delivered*
- *what impact the infrastructure requirements may have on the viability of a proposal in a draft neighbourhood plan and therefore its delivery*
- *what are the likely impacts of proposed site allocation options or policies on physical infrastructure and on the capacity of existing services, which could help shape decisions on the best site choices*

Qualifying bodies should engage infrastructure providers (eg utility companies, transport infrastructure providers and local health commissioners) in this process, advised by the local planning authority. (Paragraph: 045 Reference ID: 41-045-2019050. Revision date: 09 05 2019)

And: “What should a qualifying body do if it identifies a need for new or enhanced infrastructure?”

A qualifying body should set out and explain in their draft neighbourhood plan the prioritised infrastructure required to address the demands of the development identified in the plan”. (Paragraph: 046 Reference ID: 41-046-20140306)

3.10 The Basic Conditions Statement (BCS) sets out clearly how the parish considers the policies in the Neighbourhood Plan comply with the Basic Conditions and legal requirements, including EU Obligations. It explains how, in tabular form and in the narrative, the plan has regard to national policies, strategic policies of the development plan and how it contributes to sustainable development.

ii. Development Plan context

3.11 The neighbourhood plan must be in general conformity with the strategic policies of the development plan for the area. The development plan (excluding the County Minerals Plan) is comprised of the following:

- Colchester Core Strategy 2001-2021 (adopted 2008, with selected revisions in 2014);
- Colchester Development Policies DPD 2001-2021 (adopted 2010 with a Tiptree Inset Proposals map); together with selected revisions in 2014);
- Colchester Site Allocations DPD (adopted 2013); and
- Tiptree Jam Factory DPD (adopted 2013).

3.12 The neighbourhood plan lists these on page 9 with little commentary or application to the strategic context of the plan; though it notes that until the

emerging plan is adopted it is “*Colchester’s Local Development Framework ... [which] should be consulted as a guide to future growth and development ... up to 2021.*” The plan makes it clear, on page 8, in referencing Policy SS14 of the emerging Colchester Local Plan, that it is the emerging plan “*upon which this Neighbourhood Plan is based*”.

- 3.13 The Core Strategy plans to accommodate some 1600 homes in the three main district settlements, which includes Tiptree. Tiptree, as the largest of the three (and the others being coastal) was projected to accommodate 680 new homes, including some that had already been completed or permitted (at the time). Key facilities to be delivered included a new health centre, expansion of a primary school, new sports pitches and allotments.
- 3.14 The Site Allocations DPD planned for a number of small sites (Policy SA TIP1) and highway capacity and safety improvements to match (Policy SA TIP2). Additional employment land (1.04ha) was allocated and other open space and recreation facilities planned for.
- 3.15 The settlement boundary in the 2010 Tiptree Inset Proposals Map was drawn fairly tightly around the village, while allowing space for development in the vicinity of the secondary school in the north-east and the football-training centre in the north-west. The Jam Factory’s land to the south was mostly excluded but Tiptree Heath was included (as a detached area).

iii. Emerging Local Plan

- 3.16 The emerging Local Plan 2013-2033 was submitted for examination in October 2017. The plan is in two parts: Section 1 is a strategic section that is shared with two neighbouring Essex Councils. Section 2 applies only to Colchester. Hearing sessions took place on Section 1 in January and May 2018; progress on the examination was halted after the Inspector requested further work to be undertaken. Following consultations further examination hearings took place in January 2020. The Inspector came to conclusions in July this year offering two options to the north Essex Councils; they duly accepted the removal of two new communities and main modifications are being consulted on, closing 9th October 2020.
- 3.17 Colchester BC and the other two Councils reviewed the population projections at this time. In relation to Colchester, it was concluded that there was no meaningful change in the housing targets. Examination of Section 2 of the plan can commence when Section 1 is concluded; examiners have been appointed.
- 3.18 The emerging local plan contains a specific section on Tiptree: 14.215 - 14.221. It identifies the village as a District Centre and its available services and facilities. It notes a number of constraints, which limit the amount of land available for growth: to the south, east and north-east; also the areas in Flood Zone 2 and the Tiptree Heath SSS1. It states that Tiptree will accommodate 600 new homes and notes that the neighbourhood plan will allocate final site boundaries.

3.19 The strategic policy for Tiptree - SS14: Tiptree - is designed to guide the neighbourhood plan. The draft policy is accompanied by the Tiptree Policies Map, which indicates “broad areas of growth”. I understand that there are errors, in that the correct Local Wildlife Sites (LWS) are not shown. The “broad areas of growth” are shown by arrows indicating that expansion of Tiptree is anticipated to the west and north-west of the village.

3.20 Policy SS14 explains that within the broad areas of growth the Tiptree Neighbourhood Plan will (in summary):

- I. Define the extent of a new settlement boundary;
- II. Allocate specific sites for 600 homes;
- III. Set associated policies for housing delivery (densities, mix, types);
- IV. The same for delivery of infrastructure and community facilities;
- V. Consider strategic cross-boundary issues, eg A12 junction improvements; and
- VI. Identify other allocations in the parish, including employment and open space.

3.21 The policy goes on to state that development outside the boundary will not be supported. The policies map that accompanies the policy shows a new settlement boundary, which is very similar to the adopted Inset Map except for the area around the secondary school and Tiptree Heath, which are removed; while expansion land south of the Jam Factory is added.

3.22 Policy SS14 also states that it should be read in conjunction with generic neighbourhood plan policy SG8 and SG3 (economic growth provision). The emerging plan identifies four Local Economic Areas in Tiptree (Policy SG4); it also ranks the centre as a District Centre (SG5).

3.23 These requirements are broadly carried forward into the neighbourhood plan. A significant difference to the emerging local plan is that the neighbourhood plan shows some housing being developed mainly to the north (Elms Farm, part of TIP 14) where it was not anticipated; while a substantial area of growth is also shown in the north-west (Highland Nursery and Tower End), much as anticipated, planned as two sites within Policies TIP13 and TIP 14. At the same time the football-training centre is removed from within the adopted and emerging plans’ boundaries. The plan does not directly consider limb (v), which concerns “strategic cross-boundary issues, eg A12 junction improvements”, although the issue is very much at the heart of many local concerns and the subject of Policy TIP07, in particular, and non-policy actions.

4. Overview

4.1 The neighbourhood plan has been prepared in parallel with the emerging local plan, though now finds itself proceeding in advance of it. This does not affect its approach, rather it provides an opportunity for the local community to shape the distribution of new housing by allocating the housing sites of their choosing, based on their understanding of local needs. This kind of opportunity lies, of course, at the heart of neighbourhood planning; E.g.

Neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan [Framework para 29].

- 4.2 The neighbourhood plan does accommodate the strategic objective of 600 homes and is quite clear about where they are to be located – to the north and north-west of the village - so that these developments, alongside existing areas, can access main routes (to the A12 and nearby stations, for example) and so minimise the impacts of traffic passing through the village centre and key pinch-points. This is the plan’s driving theme and shapes the spatial strategy of the neighbourhood plan. The settlement boundary is then drawn around the village and these allocations.
- 4.3 The key question is whether the process of selecting the preferred spatial strategy - and the option appraisals and site selection process, including the environmental assessment process that goes with it - supports the plan-makers approach. I am not convinced it does. The plan itself offers no convincing (certainly not robust and proportionate) evidence – or a cross-reference to the any source – as to why the plan adopts the spatial strategy it does. It is not to be found in section 6, Spatial Strategy. I cannot see within the submitted neighbourhood plan *itself* why the spatial strategy diverges, albeit to some degree, from the emerging local plan’s “broad areas of growth”; though the LWS error is part of the explanation and some of the answers are to be found in Section 12. Otherwise, the reader has to scour the pages of the voluminous Consultation Statement and its appendices, as well as the SEA, for the answers.
- 4.4 The neighbourhood plan’s Objective 12 [To focus development in the north and west of the village where access to main routes will minimise the impacts on the village centre] and its twin Objective 14, which drive the preferred option and site allocations, are primarily derived from the consultation process - see second para on page 28 (in section 8, Traffic and Movement), for example. It is based on a chosen solution to local concerns about congestion on various routes and through certain junctions in the village centre, especially through Church Road.
- 4.5 Given the pivotal nature of these objectives, it would be necessary, in my view, for them to be underpinned by proportionate and robust evidence, such as a technical appraisal of current conditions and an assessment of the impact of different spatial options on the roads and junctions in question. The early (Regulation 14 stage) advice from County Highways was to carry out modeling to test the proposed solution. But no such exercise was carried out, for reasons that become clear later; and there is no empirical evidence available to support the preferred approach – and the new routes in particular - being necessary.
- 4.6 The Strategic Environmental Assessment (SEA) has to consider reasonable alternatives. On page 30 it explains, under the heading Strategic Alternatives, that: “*Alternatives that conflict with the plan objectives or are unlikely to be*

delivered are not reasonable alternatives.” Thus, any option in opposition to Objectives 12/14, or indeed any other objective, seems to be set up to fail. In relation to the plan’s first policy, Policy TIP01 – the Spatial Strategy section but in practice only dealing with the new settlement boundary - the SEA concludes that (top of page 31) that: *“There are no reasonable alternatives as this policy looks at the principles of promoting sustainable development and meeting the needs of the parish within the plan period, including meeting the plan period objective: to define clearly a revised settlement boundary for Tiptree”*. This is said despite a different option being presented in the emerging local plan – notwithstanding the LWS errors - on which the neighbourhood plan is based.

- 4.7 The section of the SEA, which deals with the main site allocations – TIP13 and TIP14, reaches a similar conclusion (see bottom of page 34): *“There are no reasonable alternatives as this policy looks at the principles of promoting sustainable development and meeting plan objectives: to provide access routes to new estates that avoids congestion, and to avoid increased congestion on existing roads and junctions in and around Tiptree by steering development to the north and west of the village.”* Again, this is despite the emerging local plan offering a different and – notwithstanding the LWS errors – a potentially reasonable alternative.
- 4.8 The SEA explains how the 71 sites from the Tiptree SHLAA were processed (page 48). The text explains (second para) that: *“The scores in the appraisals in appendix 3 show little difference between sites in terms of their impact on SEA objectives”*. It goes on to explain (penultimate sentence of third para) that: *“There was an expressed desire by the community to site development to the north and north west to give easy access to the A12 and to avoid increasing traffic on Church Road.”* The SEA in the following para (top of page 49) explains that: *“It is the role of the plan-maker to come to a view as to the balance between the effects identified and decide which sites to allocate in the neighbourhood plan, taking into account the findings of the SEA and other evidence.”* The sites selected are therefore those that primarily meet Objectives 12/14, as the scores of individual sites are said to show little difference. It is not clear what the “other evidence” might be.
- 4.9 A number of objectors took issue with the scoring process. They criticised the scoring for being too simplistic; also they pointed out inaccuracies (Kler Group for example), inconsistencies with both available evidence (for example, in a planning application, where issues had been resolved) or where relevant features, such as a nearby heritage asset had not been sufficiently taken into account. I share some of these concerns, though I do not regard them as undermining the SEA process. It was also claimed that there had been no consultation on the SEA itself. This was not the case.
- 4.10 The early choice of sites in the north and west came together with the desire for a series of link roads to be provided across the northern area, as part of those sites. But to join them up a “missing link” was included on land between two of the sites, beyond the boundary of the designated area, in another parish and so outside the scope, legally, of this neighbourhood plan.

5. Conclusions on core issues

- 5.1 It is entirely within the spirit and scope of neighbourhood planning for local plan-makers to reach their own conclusions as to where new development should be best located, within the strategic context, notwithstanding an emerging local plan taking, to a degree, a different spatial approach. But it has to be supported by the SEA process, as well as robust and proportionate evidence. While consultation responses are an important element in shaping the spatial strategy I am not persuaded they should have been so determinative in this case. The SEA process should not be a slave to the plan-maker's objectives (and especially 12 and 14) where there are reasonable alternatives available.
- 5.2 Overall, I find the dominating reliance on community objectives within the SEA process, without proportionate and robust evidence¹ to support the spatial strategy, to be flawed. Therefore, coupled with the inclusion of a route across land in an adjoining parish, I **conclude** that the plan does not meet the Basic Conditions or the legal requirements.
- 5.3 In the case, as here, where a neighbourhood plan is being brought forward before an up-to-date local plan is in place, the Guidance advises the qualifying body and the local planning authority (LPA) to discuss and aim to agree the relationship between policies in both plans, as it is important to minimise any conflicts between policies in both – see my quotes at para 3.4. In the absence of any representation from the local planning authority on the neighbourhood plan at Regulation 16 stage it is not possible for me to understand the degree to which the LPA has agreed the approach taken in the neighbourhood plan, for example, whether the “broad areas of growth” are considered strategic. However, in their Reg 14 representations, the Borough Council did not take issue with the spatial strategy or the settlement boundary and I conclude that the LPA considers the neighbourhood plan to broadly conform with strategic policy.
- 5.4 I am **recommending** that the plan does not proceed to referendum. However, it may help the parish council's plan-makers and the Borough Council if I consider, albeit more briefly than I would otherwise, whether the policies in the submitted plan meet the Basic Conditions, to assist in undertaking a review of the work undertaken to date and the preparation of a new plan.

6. Spatial strategy

- 6.1 The spatial strategy section does not deal with the spatial strategy. It is not explained in this section; nor are the six objectives noted necessarily the ones that seem to drive the object of Policy **TIP01: Tiptree Settlement Boundaries**. The main place one finds the essence of the plan's spatial strategy is on page

¹ That is, provided to me as part of the material submitted for examination, as listed in my para 1.9. It is not for me to go searching for other material in order to identify the relevant evidence myself. That it may exist on the parish or borough council website is not sufficient to enable me to make the link between a policy or proposal and its evidential support.

35, in section 12 (Site Allocations). This supporting text would more helpfully be transferred to introduce the strategy in section 6.

- 6.2 The supporting text in section 12 explains the need for a new settlement boundary and outlines the site assessment process, such as it was. The text explains (penultimate sentence, second para, page 35) that: *“As a result of the SHLAA process [undertaken in 2017] 42 sites around the entire Neighbourhood plan area were taken forward for further consideration. The final selection of sites has been informed by the SHLAA process alongside vision and objectives of the Neighbourhood Plan which have been derived from the community consultation exercise.”* The third paragraph in the supporting text (p 35) goes on to explain that two areas were selected for development; later [fourth para] the siting in the north was explained to be driven by the ability to access major routes, particularly the A12 without exacerbating traffic conditions on Church Road.
- 6.3 This is supported by a parish council document – Tiptree Site Selection Process - annexed to the representations by Bloor Homes. This document was not submitted as part of the Reg 16 submission material – and see footnote 1. This [undated] document outlines the site selection process that took place, in around 2017, that *“...led to the final selection of development sites to be put forward in the Neighbourhood Plan.”* This document explains (second para, page 2) that: *“At a meeting of the NP steering group together with the “Routes Group” and the “SHLAA Group” in March 2018 the NP objective to build in the north and north-west was considered together the availability of sites and the possibility of improving traffic flow around the village. As a consequence the embryonic NP “emerged””.*
- 6.4 A number of points emerge from this: i. that the choice of locating new development in the north and north-west was made early in the plan’s progress, around late 2017 and early 2018; ii, that the SHLAA and consultation processes were the main influences; and iii, that the SEA was not part of the process at that stage – that would come later. Bloor Homes made the point that: *“Both Heard and Stonegate [cases] confirm the need to avoid the premature fixing of a particular strategy without proper consideration of alternatives”* (para 3.14). Gittins, in his representations, points out that *“... a principal plan objective emerged at an early stage ...”*. I agree with these observations and have concluded that it is more than likely that there has been a premature fixing of the spatial strategy.
- 6.5 Policy **TIP01** defines the new settlement boundary, as shown on the Tiptree Policies Map. Given my comments earlier on the spatial strategy, the effect is that the settlement boundary is the outcome of the strategy rather than being part of shaping it: It is simply the boundary around the village, taking into account the chosen site allocations. There is no specific appraisal identified to justify the boundary. Leaving aside the omission of Tiptree Heath – which is not physically part of the village and which the emerging local plan omits too - there is one exception: the extension in the south on Jam Factory land.
- 6.6 Colchester Football Club pointed out that the boundary *“... should not be used*

to intentionally “de-allocate” exiting local plan designations, or to seek to reverse planning policies and proposals which are in compliance with national and local plan policy, for sites such as Florence Park...”. I disagree; it is well within the remit of a neighbourhood plan to review the boundary and, in this case, the emerging local plan specifically tasks the neighbourhood plan (at SS14 i) with defining it.

- 6.7 The policy text sets out the local exceptions to development beyond the boundary. These will need to be justified; Essex County points out that the list of developments it refers to should be within the settlement boundary not outside it. An alternative approach, which would also avoid duplication, is to rely on the local plan’s countryside policies.
- 6.8 The boundary itself needs to be derived from a clear spatial strategy and based on sufficiently robust spatial option appraisals, including consideration of reasonable alternatives, together with appropriate site assessments, to meet the Basic Conditions. The County Council (as Minerals and Waste Planning Authority) suggests that the plan should point out that any limits placed on development through the policy cannot act to constrain minerals and/or waste development. And, as Lead Local Flood Authority (LLFA) they noted that the plan “... *contains limited information about flood risk*”. They advise the inclusion of some text (see p 5 of their reps) which I would support, to meet the Basic Conditions.
- 6.9 The spatial strategy – and thus the future settlement boundary – in any new neighbourhood plan will also need to take into account the Barbrook Lane scheme, now approved on appeal; that was a contentious development. In framing a new spatial strategy it is clear that the strategic housing target of 600 is unaffected; the development simply reduces the total by up to 200 homes.

7. Homes and Housing

- 7.1 The first policy – **TIP02**: Good Quality Design - seeks to secure high standards of design and for new development to reflect the village character and feel. It is reasonably well argued and incorporates outcomes from the local consultation process. There was local support; Maldon DC also supported these policies.
- 7.2 Policy **TIP03**: Residential car parking is designed to ensure that sufficient off-road parking is available within new developments; and mainly on drives, parking courts or car ports, in preference to garages, with the aim of maintaining an orderly streetscape. It seeks to exceed the standards for larger homes, which results in higher on-site provision. The basis for this approach was a higher percentage of cars per dwelling.
- 7.3 A number of parties objected to this departure – though not the County Highway Authority - from Essex Parking Standards, which are designed to promote sustainable development. To go against these, simply on the basis of higher local car ownership, would not promote sustainable development and

not meet the Basic Conditions.

- 7.4 The next policy – **TIP04**: Building for Life - seeks to promote buildings for life in major developments. While referenced in para 15.54 of the emerging Local Plan, there is no corresponding policy.
- 7.5 The final policy in this section – **TIP05**: Dwelling Mix – seeks to deal with a historic over-provision of larger dwellings and to meet identified future needs. The plan acknowledges that this policy will be superseded, by Policy DM10 in the emerging Local Plan.
- 7.6 This section of the neighbourhood plan ends with a few paragraphs on Affordable Housing but no policy. This reads more like advocacy and I would recommend that it be moved to section 15.

8. Traffic and Movement

- 8.1 This section gets to the heart of the plan, with two policies: one dealing with sustainable movement (and routes) while the other with traffic mitigation and introduces the new primary streets. A range of objectives are cited, including Objective 14, which is almost identical to Objective 12, in focusing development in the north and west of the village to avoid increased congestion on existing roads and junctions.
- 8.2 The first part of this section, under the heading of Sustainable Movement, seeks to balance the needs of those accessing services in the village with the issue of provision of improved access to the A12 and improved links to neighbouring towns and railway stations. The text references Map 8.1 as showing the *“main pedestrian routes and destinations which new developments would be expected to link with”* but it doesn't actually do this. It would be very helpful for the map to do this so that the context for both policies is clear.
- 8.3 Policy **TIP06**: Cycling, walking and disability routes is in five parts, A-E. Each deals with issues that have arisen from the public consultation process. County Highways, in relation to A, point out they generally favour shared footways/cycleways. More generally, they recommend the plan includes more information on Travel Planning. Maldon Council supports the policy.
- 8.4 The second part of this section deals with Vehicular Traffic Movement. A major concern of the plan is congestion in the village. The plan explains that *“...to avoid congestion it is necessary to ensure the smooth flow of traffic along the main roads passing through the village and, where possible, to provide alternative routes to reduce traffic using any one road. For these reasons the plan seeks to avoid increasing traffic flow on the B1022 and B1023, especially through Church Road.”* The next paragraph explains: *“In response to community consultation this plan has placed future development in the north and north-west of the village so that future residents in these areas can access the A12 and major routes without passing through Church Road.”* That paragraph goes on to explain the alternative links [elsewhere

referred to as primary streets] to achieve this, illustrated on Map 8.2, which shows the three main housing sites, their capacities and the sections of link roads that each is expected to accommodate. Indicative new junctions with the road network are shown.

- 8.5 Neighbouring parishes took issue with this approach, as did quite a number of residents to the north of Tiptree, making the point that concentrating development on the selected sites would put intolerable pressure on the B1023, which is inadequately configured to accommodate it. Feering Parish Council regards it as “overstretched” with congestion problems that would be further compounded by other developments. They concluded by saying they “... consider that there has been a lack of engagement with Feering Parish Council, particularly with regards to transport ...”.
- 8.6 Messing-cum-Inworth Parish Council makes much the same point. They say that “... using the B1023 as the main access route for the additional homes planned for Tiptree is flawed, as the road, due to its size and nature is not fit for purpose nor can it be improved to be so.” They set out their own aims for Inworth “... to ease the dangerous traffic flow already taking place...”. They request a meeting “... to see if common ground can be found on this important matter.” It is concerning that, by the Reg 16 stage, neighbouring parish councils should feel such a lack of engagement. Maldon DC also objected to the scale of additional housing, which “ ... will impact on traffic flows, through and around the village, especially the routes to the A12.” All these concerns were echoed by many residents from the neighbouring areas.
- 8.7 The plan’s supporting text explains (page 29) that “... it is considered prudent to continue the above mentioned “alternative route” across north of the village...”. The route, across land outside the parish and designated area, is shown dotted on Maps 8.2 and 8.3. I have dealt with this particular point earlier, in my Overview, in that a neighbourhood plan cannot lawfully include proposals beyond the designated area.
- 8.8 In the Overview section I referred to issues with the “primary street”. I must say I find County Highway’s contribution on this topic puzzling. It seems that at a meeting with the parish before the Regulation 14 stage, the County was supportive of the plan’s approach; then in response to the Reg 14 version they effectively objected, suggesting modeling was required to support the routes; then later, at a further meeting, they decided that they were content with the approach being taken in the plan, provided Transport Assessments were carried out at the planning application stage to justify it. It is this view that is reproduced in the penultimate paragraph on page 35 (dealing with the Site Allocations). By Regulation 16 they had no comments at all. The requirement to submit Transport Assessments found its way into limb C of Policy TIP12: Comprehensive Development.
- 8.9 The parish council took the understandable view that if the County was leaving justification of their approach – and, by implication, the routes shown on the Maps - to the planning application stage they did not need to do any more work on it. But the Framework makes it clear that it is for the plan-

makers to support their proposals with robust and proportionate evidence, notwithstanding the County's change of mind. Even one of the promoters of an allocated site – Marden Homes, supporting TIP13 – considered the plan's approach to be outside the scope of a Transport Assessment. They commented (par 4.8): *"In safeguarding land for a link road, the NP should be supported by sufficient evidence to demonstrate that this is necessary and will alleviate existing congestion."*

- 8.10 And, at para 4.12, Marden concluded: *"We consider that these are matters that should already have been addressed within the NP and that they are not for individual planning applications to consider."* Bloor Homes (para 3.23 of their reps,) concluded that *"... there is no evidence to suggest that the proposed link road is needed, would be of benefit, is deliverable, or represents the optimum route for a new link road."* I wholly agree with the points made by Bloor and Marden. Consequently, Policy **TIP07** (I come to TIP12 later), fails the Basic Conditions.

9. Tiptree Village Centre

- 9.1 The plan seeks to support the attractiveness of the village centre, to see the variety of shops increase, also for eating and drinking, while encouraging additional car parking for visitors. Two policies are included to achieve this: **TIP08**, concerning existing businesses; and **TIP09**, dealing with new developments. The uses listed need to be evidenced.

10. Commercial Activity

- 10.1 This section, comprising one policy, seeks to protect existing employment land and to provide additional employment land in line with Policy SG4 of the emerging Local Plan. Policy **TIP10**: Business Development effectively allocates 1.5ha of employment land as part of one of the site allocations TIP14. It does not deal with protecting existing employment land, as TIP08 covers businesses in the village centre. It is presumed that the emerging Local Plan covers the four designated Local Employment Areas in the neighbourhood plan area.
- 10.2 The policy itself will require review: The Use Classes Order has just undergone significant change; and the requirement for 0.6ha of the allocation needs to be supported by sufficient evidence. It would be better for this section to focus on employment land like the local plan.

11. Community Infrastructure

- 11.1 The section on community infrastructure seeks to protect a range of facilities as well as plan for the integration of three needs, identified in a Leisure and Play Facilities' Audit, two of which are picked up in the policy (a LEAP and a MUGA), which are then identified to be provided as part of two site allocations (one each). The supporting text identifies nine community projects the parish council would like to see, seven of which find their way into the policy. These lists have arisen through the community questionnaire and are defined as

needs; though in the supporting text they are described as “aspirations”.

- 11.2 The policy – **TIP11: Planning Obligations** - only deals with new provision, not protection. It encompasses a mix of evidenced needs and un-evidenced aspirations, the latter without explaining the disparity between the lists. It is also not clear why play facilities are to be provided as part of the sites identified; no evidence is provided.
- 11.3 To meet the Basic Conditions this policy will need a complete overhaul. The projects need to be supported by proportionate and robust evidence, as do the locations of the new play facilities. The relevant site allocations, which include them, then need to be deliverable.

12. Site Allocations

- 12.1 This section is not supported by any Objectives; though, given the central role these policies play in the plan, in one sense, all or most of the objectives apply. The supporting text, as I demonstrated in relation to section 6, is mainly concerned with the spatial strategy and the rationale for the allocated sites; I have dealt with the “missing link” under TIP07, which it also explains. I won’t repeat all that here. The section has three policies; TIP12, which seeks to secure a comprehensive approach to the development of the site allocations; while TIP13 and TIP14 deal with the site allocations themselves (with the latter covering two detached sites on the north, linked by a “primary street”).
- 12.2 Between them the three sites have the capacity to deliver at least the required 600 homes. The supporting text explains (bottom of page 35) that this scale is “... *sufficient to ensure the viability of the planning gains required of developers* ...”. From Map 8.2 they are planned to deliver some 625 homes, based on the following capacities:
- TIP13: Tower End – 175 homes, in two parts (25 and 150 homes);
 - TIP14: Highland Nursery – 225 homes
 - TIP14: Elm Farm – 225 homes
- 12.3 Policy **TIP12: Comprehensive Development** is in three parts, A-C. Part A requires development on the allocated sites to be supported by overarching masterplans. Part B, that these will set out general design principles, demonstrating the neighbourhood plan’s aspirations; Part C requires each planning application to be accompanied by a Transport Assessment, as explained earlier in the report.
- 12.4 The only rationale for linking three different sites, in different ownerships, is the desired road links. Although the County Highway Authority point out that these allocations “... *represent a rare opportunity to the parish council to secure the required bus service*...”. This is a point well made and complements their comments at Reg 14 stage, which encourage the role of sustainable travel.
- 12.5 As the neighbourhood plan cannot involve land outside its designated area,

any links will have to be related to sites within the plan area; and the work needs to be done to show they are necessary. If that work shows that there are routes through or between sites - that need to be safeguarded - then the policy can simply secure that. I see no justification for more than that, as there is no other overarching connection between the sites, say in landscape, design or other terms, that cannot be covered through individual allocations. Marden Homes, in supporting an allocation, made the point that, as different landowners are involved in all three sites, the policy would place an unreasonable burden on the process and it was unnecessary anyway. I agree.

- 12.6 Policy **TIP13**: Tower End allocates the site for 175 homes and sets out nine requirements, all of which need to be met. Given the need for a re-think of the whole plan, these requirements will also necessarily require review as to their necessity and viability. At the Reg 14 strategy the Borough Council took the view that this policy was in conflict with both the adopted Core Strategy and emerging Local plan as part of the allocation is for a Gypsy & Traveller (SAH2) and as Local Economic Area. This conflict is resolved in the Tower End text and the policy in sub-para vii.
- 12.7 Policy **TIP14**: Highland Nursery and Elms Farm combines two sites into a single site allocation. It is in three parts: A deals with criteria that both sites need to meet; B and C cover the two sites separately. Each of B and C include a range of detailed site requirements to be met. As the only connection is the “missing link” there is no need to combine the sites into one policy. Again, given the need for a re-think of the whole plan, these site allocations and their requirements will also necessarily require review as to their necessity and viability, which needs to be evidenced, notwithstanding promoter support.

13 Countryside and Green Spaces

- 13.1 There are two policies in this section; the first, TIP15, covers the title of the policy and the other, TIP16, recreational disturbance. The supporting text to Policy TIP15 identifies three broad groups of open spaces: those owned or managed by the parish Council (five); the designated Local Wildlife Sites in the plan area (nine in all, which are classified by the Borough Council) and Tiptree Heath. The supporting text explains that the green spaces and designated wildlife sites in Tiptree are shown on Map 13.1, though the source of the data is not given. This shows three groups: a) Green spaces with public access – including Tiptree Heath plus a number of others, at quite a small scale; b) Local Wildlife Sites; and c) Private Green Space – only the football training ground is shown.
- 13.2 These spaces are covered by the protection given by Policy **TIP15**; the policy is supported by the County Council. However, to be effective, there needs to be evidence to support the designation of each category of site; and the smaller sites would benefit from larger scale mapping. The policy is in four parts; part D, however, seeks to ensure that new public green spaces created as part of development be transferred to the Parish Council or if that is not

possible them to an alternative body. This is not a land use policy and so I would recommend it be transferred to section 15, as something the parish council advocates.

- 13.3 The County Council suggests that the plan takes into consideration a policy to ensure connectivity of all green infrastructure (see pages 6/7 of their reps). They also point out that TIP13 and 14 should seek biodiversity gains _ I presume more that at 13 iv and 14 iii - as required by the Framework at para 175. I agree, this would meet the Basic conditions.
- 13.4 Tiptree is within the Essex Coast Recreational disturbance Avoidance and Mitigation Area (RAMS), which is a strategic solution to protect the Essex coast from the recreational pressures of a growing population, especially on ground nesting birds. Policy **TIP16** supports the strategic policy. Natural England comments that, to comply with the Framework at paras 170 and 174, the plan needs to take on board the hierarchy of designated sites and suggests appropriate text. Again, I agree; it would meet the Basic Conditions.

14 The Historic Environment

- 14.1 There is only one policy. It is not necessary as it duplicates the legislation, the Framework and development plan policy.

15. Non-Policy Actions

- 15.1 The neighbourhood plan includes non-land use policy matters that the parish council wishes to see addressed. Their inclusion in the manner presented complies with the Guidance on this.

16. Other matters

- 16.1 The plan needs to function as an easily referenceable development plan document, to meet the Basic Conditions. As such, I recommend that each paragraph within each chapter follows a clear and consistent numbering order (such as 1. Introduction; 1.1 first paragraph etc). Sub-headings don't normally need numbering unless it's appropriate to do so. It is not necessary to number the contents page. Mapping of smaller sites needs to be accommodated for legibility, at a larger scale, possibly in an appendix, and suitably cross-referenced in the policy and supporting text, where appropriate.

17. Referendum Area

- 17.1 The Planning Practice Guidance on the Independent Examination explains:

"It may be appropriate to extend the referendum area beyond the neighbourhood area, for example where the scale or nature of the proposals in the draft neighbourhood plan or Order are such that they will have a substantial, direct and demonstrable impact beyond the neighbourhood area."
Reference: 41-059-20140306

17.2 There are formal development site allocations in this neighbourhood plan on the border with the adjoining parish. The plan also has a proposed route shown across land in that parish – the “missing-link”. In my view the nature and scale of what is proposed in the plan would indeed *have a substantial, direct and demonstrable impact beyond the neighbourhood area*. I would have recommended, if the plan were proceeding to referendum, that the Referendum Area be extended beyond the designated neighbourhood area to include all or part of Messing-cum-Inworth parish.

18. Conclusions and recommendations

18.1 Overall, from my examination of the submitted Tiptree Neighbourhood Plan, together with the submitted supporting documents, including having regard to all the representations made, I have concluded that the neighborhood plan will not meet the Basic Conditions nor the legal requirements. I have set out my findings, drawn from my considerations in my report, in the Summary on page 3.

18.2 In conclusion, I **recommend** that the Tiptree Neighbourhood Plan should NOT proceed to referendum.

18.3 Finally, my thanks to both the Borough Council and the Parish Council for their assistance in undertaking the examination.

John Parmiter FRICS MRTPI

9 October 2020

Independent Examiner

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