

TOWN AND COUNTRY PLANNING ACT 1990**APPEAL BY MARDEN HOMES LIMITED****LAND AT KELVEDON ROAD, TIPTREE, COLCHESTER CO5 0LU**

OPENING ON BEHALF OF THE APPELLANT

Introduction

1. The appeal proposal seeks planning permission for development consisting of:

“Demolition of existing buildings on the site and redevelopment to provide 130 residential dwellings with access, link road to allow for potential future connections, associated parking, private amenity space and public open space.”

The Appeal Site

2. The Appeal Site is located to the south of Kelvedon Road, Tiptree. It extends to 5.16ha and currently accommodates a residential dwelling, some gypsy and traveller accommodation, residential outbuildings and paddocks. The site sits between existing residential development and the Tower End Employment Site. It adjoins existing residential properties fronting Kelvedon Road to the north-west. The south-east of the Appeal Site abuts a residential development that is currently being constructed and known as “Springfields”. The Gables is an existing substantial detached residential property fronting Kelvedon Road that adjoins the Appeal Site at three sides.
3. Tiptree is recognised as being a sustainable settlement. It is a Key District Settlement in the Colchester Core Strategy and identified as a Rural District Centre in Adopted

Part 1 Colchester Local Plan. The settlement has a “high number of key services and community facilities”. These include two supermarkets, 4 primary schools, a secondary school, a community centre, a GP surgery, as well as a range of independent shops, cafes and restaurants. These services support the needs of local residents and businesses in Tiptree and the wider community in the surrounding rural areas. There are four Local Economic Areas in Tiptree.

4. The eLP recognises that there are regular bus routes serving the village to and from Colchester. The eLP adds:

“Accordingly, Tiptree is considered to be a sustainable settlement suitable for growth during the plan period.”

5. The eLP also addresses the spatial issues for accommodating growth at Tiptree. It notes that there are a number of constraints that limit the amount of land available for growth in Tiptree. Development to the south east is constrained by a number of issues including reduction in a green gap, flooding and a wildlife site. Expansion to the north east of Tiptree is constrained by a School and Warriors Rest while expansion to the south west is constrained by Tiptree Heath SSSI and two Local Wildlife Sites.
6. The appeal site is located within a preferred direction of growth.

Main Issues

7. The LPA’s Statement of Case had set out a number of putative Reasons for Refusal (“RfR”) had the application been determined by it. A number of those issues have been addressed by reference to the proposed Section 106 Planning Obligation.
8. The concern of the Highway Authority has been addressed and is the subject matter of a SoCG.

9. Following the Case Management Conference on 14th February 2022, the main considerations in the Inquiry are considered to be:
 - (a) Whether the proposal meets a housing need in the context of local and national planning policy;
 - (b) Whether the proposal is appropriate in terms of design;
 - (c) Whether the proposal comprises sustainable development in an overall planning balance.
- (a) **Whether the proposal meets a housing need in the context of local and national planning policy**
10. It should not be a controversial proposition to state that the NPPF policy exhortation to significantly boost the supply of homes does not cease to be of application in circumstances where the LPA is able to demonstrate a 5 year supply of housing land.
11. The North Essex Authorities' Shared Strategic Section 1 Plan was examined and adopted in relation to the 2012 iteration of NPPF under the transitional arrangements provided for. The relevant strategic Policy SP4 sets a housing requirement of 920 dwellings per annum in Colchester. The examination expressly acknowledged that in determining housing need the 2019 version of NPPF did not apply to the Plan.
12. In terms of delivery between 2001 and 2021, there were completions of on average 938 dpa. The supply is agreed to represent 5.74 years.
13. Nevertheless, it is the Appellant's case that it is material in determining the current appeal to have regard to an assessment of need based on current national policy and the Standard Method. Further force can be given to this issue having regard to the evidence base utilised in formulating the requirement of 920 dap. As such, having regard to the changing market signals, continued worsening of affordability in the Borough and the disparity between the adopted housing requirement and that

produced by the Standard Method would provide a compelling justification to give additional weight to the provision of market and affordable housing in the planning balance in this case.

14. The Appellant contends that the Council's case that consideration of the Standard Method is immaterial (and therefore should not be taken into account at all) is simply untenable in law.

(b) Whether the proposal is appropriate in terms of design

15. Design is a product of an iterative process. The starting point of the process was for the Scheme Architect to have a clear understanding of appropriate context of the AS and identify constraints.
16. The detailed analysis provided areas of opportunity to be promoted within the design and included enhancements clearly concerning the retention of existing vegetation in the design proposals.
17. The design process is explained in the Appellant's evidence including the principles to be applied to design including being landscape-led; the retention of existing vegetation; enhanced connectivity; soften any impact; provide ecological benefits; provide the ability - in the future - for development of the road network from the site boundary; provide pedestrian and cycle routes; the provision of a large accessible Public Open Space.
18. The scheme would provide a variety of house types in storey heights between 1.5 and 3 storey. The house types are bespoke for the scheme and not a national builder house type imposed on the site. The materials will lead from the existing mixed character of Tiptree and will consist of a pallet including the use of brick, render and weatherboarding. The proposal is designed with public fronts overlooking the streets and open spaces providing surveillance and active street frontage. The scheme

promotes and delivers a tenure blind approach to the provision of affordable housing throughout the development.

19. The design proposals have been against the Essex Design Guide. The EDG is an appropriate tool to inform the design process and is considered to be consistent with National Design Guidance.
20. The design results in a proposal of high quality housing and one that makes adequate provision for protecting and maintaining the amenity of existing residential property. The scale, height and massing of the proposed building is appropriate within the existing context.

(c) **Whether the proposal comprises sustainable development in an overall planning balance**

The Tilted Balance

21. The NPPF (2021) provides two routes to the “tilted balance”. The first is an LPA’s inability to demonstrate a 5 year supply of housing land. That route does not arise in this case and this is acknowledged by the Appellants.
22. The second route is that the most important policies for determining the application are out-of-date. However, as should be clear from the words used in NPPF not all policies relevant to a proposal will represent the “most important”.
23. The detailed analysis of this point is contained within the evidence of James Firth.
24. For the purposes of summation of the Appellant’s case in this Opening, the policies surrounding housing and the identification of a settlement boundary; environmental policy; the employment land designation of part of the site; gypsy accommodation and transport.

25. The settlement boundary for Tiptree is out-of-date. The current settlement boundary was last reviewed as part of the 2010 Site Allocations DPD. It does not reflect the latest housing targets in Section 1 of the Local Plan or the acknowledged need for review of the settlement boundary. Specifically, Section 2 of the Local Plan including Policy SS14 deals with the need for review of the settlement boundary and directs growth to the vicinity of the Appeal Site.
26. Whilst the issues concerning the detailed design of the scheme will provide a lively basis for discussion during the public inquiry it is difficult to discern from the LPA case the extent to which, if at all, it would consider the principle of the residential development of the AS objectionable.
27. Section 2 of the Local Plan is at an advanced stage and “delegates” the fixing of any new settlement boundary at Tiptree to the Neighbourhood Plan. In expressly recognising the need to redraw the settlement boundaries the Plan is acknowledging that the existing settlement boundary is not “fit for purpose”. A requirement in the eLP for a **minimum** of 400 homes required in Tiptree that can only be achieved by growth outside of the existing settlement boundary but fails to address the change required is a sure enough admission that the policies dependant on that boundary are out of date. Furthermore, fails to acknowledge the prospect of whether any Neighbourhood Plan is successfully brought forward.
28. In terms of the planning balance, the Appellant considers that the provision of market and affordable housing attracts very substantial weight. The development is sustainable, contributing to the economy, the social aspect of sustainability and the environmental aspect.
29. It is considered that the benefits of the proposal clearly outweigh the limited harms capable of being identified in this case.

Conclusion

30. The Inspector will be invited to allow the appeal in the light of the evidence provided.

JOHN BARRETT

April 2022