

**TOWN AND COUNTRY PLANNING ACT 1990**

**PLANNING APPEAL BY MARDEN HOMES LIMITED**

**IN RESPECT OF LAND ADJOINING THE GABLES, KELVEDON ROAD, TIPTREE CO5 0LU**

**PINS REF. APP/A1530/W/21/3278575**

**OPENING STATEMENT ON BEHALF OF**

**COLCHESTER BOROUGH COUNCIL**

**INTRODUCTION: THE MATTER FOR DECISION**

1. The application at appeal is for detailed planning permission to provide 130 dwellings with access, link road to allow for potential future connections, associated parking, private amenity space and public open space.
2. The appeal site is located on Kelvedon Road on the outskirts of Tiptree village. It wraps around but does not include “The Gables” which also fronts onto Kelvedon Road, and therefore has two points of access onto that road. The site is adjacent to existing dwellings to the south, an industrial complex to the north, and open countryside to the west (through which a Public Right of Way passes running north-south – albeit not abutting the appeal site).
3. The application was submitted without pre-app discussion, and consultation responses disclosed significant issues including in respect of design matters. The appeal is against non-determination.
4. The Council resolved initially that, had it remained in a position to determine it, the application would have been refused for reasons concerning design, East Coast RAMS requirements, planning contributions/mitigation and highways matters.
5. It is readily apparent from these reasons that the Council does not dispute the principle of residential development of the appeal site (see also General SoCG [2.1] re: Tiptree as a Sustainable Settlement and the Direction of Growth). The matter for decision as between the principal parties, i.e. the real question in this case, concerns instead the appropriateness of design in the context of a relevant planning balance.

## **DEVELOPMENT PLAN**

6. The statutory development plan for Colchester comprises the Local Plan (2008, 2010, 2014 & 16) and Section 1 Local Plan (2021) as follows:
  - Colchester Local Plan (“**CLP**”) Section 1 - North Essex Authorities Shared Strategic Section 1 Plan 2013-2033. (adopted February 2021) (CD8.5);
  - Colchester Core Strategy (2008) as amended by the Focused Review (2014; “**CCS**”) (CD8.1);
  - Site Allocations DPD (2010; “**SADPD**”) (CD8.3); and
  - Development Policies DPD (2010; “**DPDPD**”) (CD8.2).
7. Colchester-specific policies and allocations are set out in emerging CLP (“**eCLP**”) Section 2 (CD9.5). Following closure of consultation on Main Modifications in November 2021, the Inspector’s final notes are awaited, and adoption will follow.
8. Tiptree-specific policies are set out in the emerging Tiptree Neighbourhood Plan (“**eTNP**”) (CD14.15), though it is agreed that its contents cannot be given weight in determination of this appeal (General SoCG [2.1]) due to its current status.

## **MAIN CONSIDERATIONS**

9. The CMC Summary Note (16 February 2022) identifies the main considerations in the Inquiry to be whether the appeal proposal:
  - meets a housing need in the context of local and national planning policy;
  - is appropriate in terms of design; and
  - comprises sustainable development in an overall planning balance.

## **MEETING A HOUSING NEED**

10. Colchester Borough has an impressive track-record of housing delivery that is both consistently and well above its own minimum target. It has passed the Housing Delivery Test comfortably and consistently. Its track-record is also impressive compared with other authorities. It is further

agreed, in that context, that the Council is able to demonstrate a minimum 5.74 years five year housing land supply (“**5YHLS**”). That supply is measured against an up-to-date development plan housing requirement designed to significantly boost the supply of housing. There is no basis on the evidence to suppose that the Borough Council is not now set fair to maintain that track-record into the future – aided by an up-to-date Local Plan.

11. The Appellant challenges at least the weight attaching to this position by reference to re-calculation of the Objectively Assessed Need (“**OAN**”), and the housing requirement calculated now in accordance with the standard method (“**SM**”).
12. No weight attaches to the Appellant’s re-calculated OAN:
  - it derives from an exercise that assumes that the CLP HLS requirement of 920 dpa is founded on evidence available to the Examiner in 2016, and that he did not subsequently re-consider whether his first findings remained sound. That assumption is, with respect, incorrect and misleading;
  - it involves going over matters and evidence considered properly instead as part of the Local Plan examination;
  - it involves Mr Hollingsworth re-running the argument that he put to the Local Plan 18 months ago (October 2020), that the Inspector addressed and rejected;
  - there has been no material change in circumstances concerning the OAN following the Examiner’s final confirmation of the HLS requirement at 920 dpa and subsequent adoption of CLP; and
  - Ms Howick demonstrates that re-calculation of the OAN now would not, in any event, warrant an adjustment for market signals.
13. Reference instead to the SM involves consideration of calculation of local housing need in accordance with a method that the Framework (in its previous incarnation) required the Borough Council not to adopt, i.e. contrary to national planning policy itself. It cannot sensibly be that the Framework allows, in a plan-led system, for weight attaching to the housing land requirement adopted in accordance with it in reliance upon a requirement derived from a

massively-premature calculation that is contrary to it. Particularly where the Local Plan is so recently adopted (and the difference not marked). The case for disregarding a local housing need figure derived from a premature SM calculation is stronger here than in the recent **Reading** appeal (see Ms Howick's Rebuttal).

14. More locally, there exists also a strong track record of delivering housing in Tiptree via both the Local Plan process and windfalls. There exists also a substantial existing pipeline of supply, with eTNP set to provide for the minimum 400 dwellings allocated to the settlement by eCLP over the period to 2033.
15. Delivery of affordable housing through s.106 planning obligations has been steady against the overall level of 278 dpa, and has been topped up by both Council house acquisitions and 100% affordable housing schemes. Affordable housing delivery in Tiptree has flowed from the strong track record of housing delivery referred to above. There exists a reasonable pipeline of supply (Barbrook Lane will result in 60 affordable homes) measured against housing register applicants with a preference for Tiptree (35) and the eTNP Housing Needs Survey (2017) (19 + 4 shared ownership).
16. Weight should not attach to a suggestion that the housing requirement in Colchester Borough is other than 920 dpa or that the need for housing is materially changed following upon adoption of CLP and pending adoption of eCLP.

#### **APPROPRIATENESS IN TERMS OF DESIGN**

17. There was a suggestion at the more recent CMC that the Council's design reason had or might have become more important in light of the resolution of others. That is emphatically not the case. Design is now, at any rate, a critical matter for consideration in the context of the Framework and the Council's resistance to the proposal on design grounds has always been and remains at the heart of its case. The evidence will demonstrate that it is also well-founded.
18. The Framework could not be clearer. What one might refer to in composite as "good design" is integral to the social dimension of sustainable development, whilst protecting or enhancing the natural and built environment lie at the heart of the environmental dimension ([8b/c]). The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve, and good design is a key aspect of

sustainable development ([126]). Development that is not well or is poorly designed should be refused – especially where it fails to reflect local design policies and Government guidance on design ([134] & PPG Ref. ID 26-002-20191001).

19. Most particularly, it is abundantly clear from the Framework at [124-5] that making optimal or efficient land involves taking account, inter alia, of both the desirability of maintaining an area's prevailing character or promoting change, and the importance of securing well-designed, attractive and healthy places. These are key facets of and not opposed to/in competition with making the optimal or efficient use of land. Arguments that making either of these justifies compromise of good design to any degree should be rejected.
  
20. Mr Cairns explains and demonstrates, in terms of the characteristics of well-designed places identified in the National Design Guide (CD12.2), that the proposed development fails specifically to:
  - i. respond positively to site context
  
  - ii. Create a coherent and distinctive identity that the community will identify positively with;
  
  - iii. employ a cohesive and coherent pattern of development that reinforces local distinctiveness;
  
  - iv. create a highly accessible and permeable layout that integrates well with neighbouring development and routes;
  
  - v. enhance and optimise the opportunities for biodiversity including net gain;
  
  - vi. create public spaces of varying scale, purpose and character throughout the scheme to create a hierarchy of new spaces for safe social interaction for residents of all ages, including play;
  
  - vii. provide opportunities for mixed uses and ensure that the development is socially inclusive through an appropriate mix of house types and tenures secured by legal agreement;

- viii. deliver homes with a richness of architectural detail and sustainability credentials;
  - ix. use resources efficiently and minimise emissions to mitigate climate change; and
  - x. create an adaptable and resilient pattern of development to ensure longevity of use.
21. The proposal accordingly conflicts with these up-to-date statutory development plan policies: CLP Policy SP7 (Place Shaping Principles), CCS Policies ENV1 (Environment) and UR2 (Built Design & Character), and DPDPD Policy DP1 (Design and Amenity). It also conflicts with eCLP Policies ENV1 (Environment) and DM15 (Design and Amenity).

### **SUSTAINABLE DEVELOPMENT IN AN OVERALL PLANNING BALANCE**

#### **Development plan policy as a whole**

22. Bearing in mind the real question in this appeal (paragraph 5 above) CLP Policy SP7, CCS Policies ENV1 and UR2, and DPDPD Policy DP1 are development plan policies that are “*most Important for determining the application*” (Framework [ii(d)]). They should therefore feature in the *Wavendon* basket (***Wavendon Properties Ltd v. SSHCLG*** [2019] EWHC 154 (CD14.22)). eCLP Policies ENV1 and DM15 are their emerging equivalents.
23. Turning to the second phase of the “*Wavendon* exercise”, it is self-evident that CLP Policy SP7 is not out-of-date. CCS Policy ENV is not out-of-date having regard to the assessment of the Inspectors at the recent Barbrook Lane and Maldon Road, Tiptree appeals (CD7.1 & 7.2) (bearing in mind also that the spatial element of that policy including opposition to development outside the settlement boundary is not in issue here). CCS Policy EC2 and DPDDP Policy DP1 are also compliant with the updated Framework, and not out-of-date. It should also be self-evident that eCLP Policies ENV1 and DM15 are not out-of-date. Finally, none of these policies is deemed out-of-date by reason of the absence of a 5YHLS. The tilted balance does not therefore apply.

24. The Appellant contends instead for a **Wavendon** basket of very different hue. It omits all but one of the development plan policies that relate to the matter for decision (how could CLP Policy SP7 (Place Shaping Principles) not be included?), and features four policies relating other matters that do not require resolution in the current appeal.
25. In this context, it is as well to recall:
- that [11(d)] of the Framework is “*a policy designed to shape and direct the exercise of planning judgment*”; and
  - that its purpose is “*to put up-to-date plans and plan-led decision-taking at the heart of the development control process*” (**Wavendon** [58]).
26. Whether SADPD Policies TIP1 & 2 (Residential Sites & Transport in Tiptree) and H2 (Gypsy and Traveller Accommodation), or DPDPD Policy DP5 (Appropriate Employment Uses ...) are out-of-date in the context of [11(d)] is not relevant to either shaping and directing the decision required on this appeal. Neither is it appropriate or necessary that any of these should be put at the heart of that particular decision. Notwithstanding that Policies TIP2, DP5 and H2 are out-of-date, they simply do not feature properly, alongside Policy TIP1, in the **Wavendon** basket for the purposes of decision on the issues arising.
27. The fact that Mr Firth considers that conflict with the existing employment and gypsy & traveller allocations attracts only “*limited*” weighting (which is agreed) as an adverse impact reflects, simply, that the principle of residential development is not at issue in this appeal. But this does contribute meaningfully to the balancing exercise that is required in respect of the appeal scheme. Likewise the “*moderate*” weightings (also agreed) concerning impacts/harm to landscape, the highway network, and local infrastructure.
28. The Appellant expands the scope of the balancing exercise too widely, to encompass matters that do not bear on the real question in this case. That question is, putting it another way, whether the appeal proposal is an acceptable means of realising the agreed residential potential of the appeal site (hence also multiple “*Not referenced*” entries at Mr Firth’s Rebuttal summary table (pp.23-25)).
29. To conclude, the application is not in accordance with the up-to-date development plan policy considered as a whole and the most important policies in particular. Those policies are not out-

of-date on any basis. The full force of these conclusions should therefore, in a genuinely planned system (Framework [15]), be brought to bear. It remains to be considered whether other material considerations indicate nonetheless that the planning balance favours the grant of planning permission on the flat balance.

### **Planning balance**

30. The planning balance is discussed below under the headings “Social”, “Economic” and “Environment” recognising that some benefits or impacts may appear legitimately under one or other or more of these headings.

#### *Social*

31. The Appellant accords very substantial weight to the social benefits of the addition of market and affordable housing. The Council freely acknowledges that these are both benefits. The weight otherwise attaching to the first of these is moderated, however, not only by the Council’s ability to demonstrate a 5YHLS but also its track-record of delivery.
32. Fundamentally, however, securing a high standard of design is itself integral to securing benefit consistent with the social strand of sustainable development, and the achievement of sustainable development here is frustrated by failure to do so. That failure is, moreover, avoidable. There is no reason at all why housing could not be brought forward on the site in a scheme that is beautiful and exhibits good-quality place-making, and provision of market housing does not itself justify to do so to any degree. In these circumstances, limited weight only attaches to the provision of market housing.
33. The track-record of affordable housing delivery in the Borough and Tiptree alone is referred to at paragraph 15 above. However, the fundamental point at paragraph 32 above applies equally to provision of affordable housing and limited weight also attaches to its proposed provision in that context.
34. So far as other benefits that might appear under this heading are concerned, (a) linked road provision might be argued to be a limited benefit, but no longer features as part of eTNP and contributes instead to poor urban design. (b) The new footway outside the site attracts limited weight, whereas dropped kerbs and highway improvements are otherwise required to facilitate



development and mitigate its effects. (c) The efficient or optimal use of land is a requirement of the Framework, which does not envisage that it should or can be secured at the expense of high design quality. These matters do not attract weight in the planning balance, excepting the footway referred to above.

#### *Economic*

35. The development would create jobs during the construction phase, generate expenditure that would support local services and significant Council Tax receipts and New Homes Bonus payments. However, the local authority is buoyant notwithstanding the pandemic. The economic benefits would not, moreover, reduce if the scheme were to be re-designed. The sum of economic benefits do not therefore attract more than moderate weight overall.

#### *Environmental*

36. The Council does not accept that the Appellant's biodiversity net gain or tree canopy retention calculations are realistic. These each attract limited weight, not more, in any event since both are a eCLP policy requirement and would feature to greater degree as part of a well-designed scheme. The RAMs contribution should properly be considered to be neutral in the planning balance.
37. The Council does not consider that there other environmental benefits to weigh against the very significant disbenefits of a poorly designed scheme. The Appellant's reference to "*bespoke*" design attracting only "*limited positive weight*" hints at least at recognition that a better design outcome is available.

#### **Conclusion**

38. The appeal proposal is in significant conflict with up-to-date policy in the development plan and Framework considered as a whole, and the most important development plan and emerging development plan policies in particular. Those breaches are indicative of harm, itself avoidable, that significantly and demonstrably outweighs the limited benefits of the proposal overall.

**CONCLUSION**

39. For the reasons summarised above, the Inspector will be respectfully invited to dismiss this appeal.

SIMON PICKLES

5 April 2022

**Landmark Chambers**

**London EC4A 2HG**