

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL BY MARDEN HOMES LIMITED

LAND AT KELVEDON ROAD, TIPTREE, COLCHESTER CO5 0LU

CLOSING ON BEHALF OF THE APPELLANT

Introduction

1. The Opening that was provided at the start of the Inquiry is adopted without further repetition. The Main Issues that were identified at the Case Management Conference on 14th February 2022 are relevant for the purposes of determining this appeal.

- (a) **Whether the proposal meets a housing need in the context of local and national planning policy**

2. It is agreed that the provision of additional market and affordable housing lies firmly on the benefits side of the planning balance¹. The issue remains one of weight to be given to meeting such need. It is further agreed between the parties that the LPA is able to demonstrate a 5 year supply of deliverable housing land². The supply is agreed at 5.74 years.

3. It is the Appellant's case that very substantial weight should be attributed to the appeal proposal consisting of 130 market and affordable homes.

4. All iterations of national policy in NPPF have contained the exhortation of boosting significantly the supply of homes. The latest version - following that introduced in 2018 - requires the determination of the minimum housing requirement to be undertaken by a local housing needs assessment undertaken in accordance with the Standard Method ("the SM").

¹ JR Xx

² Housing SoCG section 2 paragraph 10

It must follow that the Government sees the use of the SM as being consistent with the policy of boosting significantly the supply of homes³. The following was further agreed in Xx of CH:

- (a) The exhortation to boost significantly the supply of homes does not cease on the LPA being able to demonstrate a 5 YS. In short, it is a floor not a ceiling.
- (b) The current approach to considering housing need is materially different to that set out in the 2012 version of NPPF. The 2012 version required an objective assessment of need for both market and affordable housing.
- (c) Specifically, the SM approach is policy driven aimed at maintaining higher levels of housing delivery.
- (d) Furthermore, the SM is not itself a housing requirement for planning purposes but a **minimum** starting point.

Housing Requirement

5. It is agreed that the housing requirement for Colchester is that derived from the production of the North Essex Authorities Shared Strategic Section 1 Plan adopted in February 2021⁴. It was examined in accordance with the 2012 NPPF under the transitional arrangements. Policy SP4 sets the housing requirement of a minimum of 18,400 dwellings over the period 2013 – 2033. The annual housing requirement of 920 dpa is therefore also a minimum requirement. The derivation of the 920 dpa requirement follows on from the Peter Brett Associates production of an Objective Assessment Housing Need Study published in July 2015 and updated in November 2016⁵. Specifically, Policy SP4 includes an expectation of additional housing beyond that derived from the OAN. SP4 states:

“The local planning authorities will identify sufficient deliverable sites, developable sites and/or broad locations for their respective plan period, to meet the housing requirements in the table below, and will incorporate additional provision to ensure flexibility and choice and competition for land.”

³ CH Xx

⁴ CD 8.5.

⁵ CD 8.5, para.4.2 24/66.

6. This is even more clearly identified and emphasised in considering the report of the Examining Inspector dated December 2020⁶. At Paragraph 60 Inspector Clews stated:

“In order for housing delivery to be maintained in the NEAs’ area, as national policy requires, there needs to be sufficient flexibility in the supply of land in the event that some sites may not come forward as expected. Policy SP3 (subsequently SP4) therefore needs to make it clear that additional provision will be made in order to ensure flexibility, choice and competition.”

7. Therefore, it was clear that the Examining Inspector of the Plan was clear that this was a minimum requirement.
8. An analysis of the derivation contained within the OAN appears in the evidence of SH. The source was, as stated earlier, based upon the OAN Update 2016. Clearly the data over six years old.
9. The demographic starting point produced an 866 dpa requirement. No market signal was provided. The OAN 2016 Update⁷ made allowance for market uplift in Colchester:

“... the housing affordability ratio is slightly above the national average, but house prices and private rents are well below national averages, and housing delivery was less affected by the recession compared to other HMA authorities and completions exceed Plan targets. There is no strong evidence of a need for a market signal uplift here.”⁸

10. In particular, it is noteworthy that the rationale here was comparison with “national” averages, house prices and rents.
11. The current position on the evidence shows the position relative to England significantly worsening⁹. Thus, the rationale for making no market uplift for Colchester given the OAN 2016 no longer applies. In the 2016 Update, a 6% increase above the graphic starting point was allowed to reflect an updated assessment of labour market balance for Colchester - that is to provide enough workers to meet demand. The OAN for each District was the highest of the job-leg and market signals adjusted figure¹⁰.

⁶ CD 8.6.

⁷ CD 10.5.

⁸ CD 10.5, para.5.101 72/116.

⁹ SH PoE 413.

¹⁰ CD 10.5, para.6.36 81/116.

Standard Method

12. The Appellant recognises that the Standard Method in NPPF is not the appropriate basis for calculating the housing requirement in this case. Because of the examination of the Plan in accordance with the transitional arrangements, it is the 920 dpa requirement that is the proper lawful basis for the calculation.
13. However, the suggestion by CH that the SM has “no relevance”¹¹ to the appeal must, it is submitted, be wrong as a matter of law¹². The current starting point of a housing need assessment consistent with the national policy of boosting significantly the supply of housing, must be relevant. Whilst the decision-maker would be entitled to apply an appropriate weighting, the fact that such a method exists and accords with national policy must render it material. Furthermore, the reason for its introduction – to increase supply –and its use as a “direction of travel” is also material.
14. The application of the SM produces a minimum housing requirement for Colchester of 1,061 dpa. This is a quantum of land that is over 140 dwellings per annum greater than that derived from the OAN and, in the context of this appeal, represents a site slightly larger than the AS being brought forward every year. If the 5 YS is measured against the minimum requirement set by SM, the LPA would only have 4.98 YS.

Affordable Housing

15. The evidence provided by the LPA asserted that at the point of preparation of the LP and its housing requirement the NEAs:

“... considered there was a good prospect that if the objectively assessed total need was met in full the area’s affordable need would also be met in full. Therefore they did not increase the housing figure in the strategic plan to help deliver the required number of affordable homes.”¹³

16. It follows, as SH pointed out¹⁴, that as the objective of the NEAs was to meet AH need in full, then the approach is clearly not working.

¹¹ CH PoE 1.5 5/15

¹² The Reading Appeal decision – Appx 3 of CH Rebuttal did not conclude the SM was irrelevant – see paragraphs 187 and 188 and the Inspector gave “significant weight” to the provision of further housing.

¹³ CH PoE 2.13 8/15.

¹⁴ SH CH PoE Reb 2.6 4/12.

17. The OAN calculated AH need at 278 dpa¹⁵. It is clear that at the most anecdotal level the Council's Social Housing Managers refers to the numbers on the Housing Register as "ever growing".
18. The assessed AH need is Borough-wide and the LPA agrees that the Borough need for AH can be met in Tiptree.
19. There is no disagreement as to the fact that there has developed since the start of the Plan period a significant shortfall of well over 1,000 affordable homes.
20. The evidence of SH has focused on the delivery of AH as a product of Section 106 obligations. The Appellant acknowledges that additional sources including direct involvement by the LPA, and other initiatives will make some contribution. However, it is inconceivable that these additional sources of supply will contribute sufficient to eliminate - or even reducing to any significant degree - the existing shortfall that is increasing year on year by 278 units.
21. The delivery set out in the evidence of SH makes depressing reading. Between 2013 – 2021 less than half¹⁶ of AH need was met leaving a shortfall of 1,115 units. To meet a shortfall and AH need in full to 2026 it would be necessary to deliver 2,450 affordable homes. This would actually represent 44% of the total projected supply. However, the average proportion of affordable housing has only been 13.1%¹⁷. His evidence further identified¹⁸ that in the Plan period 2013-2033 AH need was then assessed at 5,340. For 2021-2033 plus the identified accumulated shortfall AH need is 4,319 or 366 dpa.
22. Inevitably and inexorably, the LPA had to concede that the identified AH need will remain unmet at the end of the Plan period¹⁹.
23. Thus, a concerning aspect of Colchester's position is that whilst it has met its annual housing requirement calculated in accordance with the OAN methodology, the position with regard to affordability has worsened considerably. Since the assessment of AH need at 278dpa indications of worsening affordability are evident and the currently assessed need may have

¹⁵ See note of correction in the evidence of BJ.

¹⁶ 48%.

¹⁷ SH Reb PoE 5.7.

¹⁸ SH Reb PoE 5.10 20/25.

¹⁹ BJ Xx.

to be increased. As explained in the evidence of SH²⁰, this has real human consequences resulting in a significant proportion of the population in England cutting down on essential housing expenditure.

Tiptree

24. The eLP does not allocate any land for residential development in Tiptree. There is no analysis in the evidence base of the LP or of an assessment of housing need below Borough level. There is therefore clearly no evidence-based document that is capable of providing any justification for limiting development to a maximum of 400 at Tiptree. On the contrary, the evidence does not indicate infrastructure or social constraints as such that would inhibit the ability of Tiptree to deliver above the minimum policy requirement in the emerging Local Plan. Importantly, the imposition of the “minimum” requirement was introduced as a Main Modification of the eLP. The eLP²¹ identifies Tiptree as a sustainable settlement and one of three Rural District Centres in the settlement hierarchy²².
25. The sustainability credentials of the site are identified in the eLP²³ which identify Tiptree amongst other things:
- A centre with a “high number” of key services and community facilities;
 - Two supermarkets, four primary schools and a secondary school;
 - A community centre and a GP practice;
 - A range of independent shops, cafes and restaurants;
 - In addition to meeting the needs of residents, it also serves the needs of the communities from the surrounding rural areas.
26. The eLP also recognised that there were a number of constraints that limit the amount of land available for growth in Tiptree and was spatially specific as to where the opportunities for

²⁰ SH Reb PoE 2.15.

²¹ CD 9.1.

²² CD 9.1, para.3.4 29/261.

²³ CD 9.1, para.14.215-14.217.

growth existed²⁴. Development to the south-east, north-east and south-west of Tiptree is constrained. Policy SS14 as subject to the MM provides:

“Within the preferred directions of growth shown on the Tiptree policies map, to the south-west and north/north-west, subject to existing constraints, the Tiptree Neighbourhood Plan will:

- (i) define the extent of a new settlement boundary for all Tiptree;*
- (ii) allocate specific sites for housing allocations to deliver a minimum of 400 dwellings ...”*

27. I will address the settlement boundary issue later in this Closing.

28. Crucially for the purpose of the appeal, the LPA agrees:

- (a) that the AS lies within the preferred directions of growth shown on the Tiptree policies map; and
- (b) that subject to the issue of design, there is no objection to the residential development of the AS in principle.

Neighbourhood Plan

29. The current iteration of the NP failed the Basic Conditions. The Regulation 14 version has recently been published and that version, it is agreed, carries no weight in the determination of the appeal²⁵.

30. The NP assessment of need for 19 AH homes will also carry no weight and for the reasons explained by SH²⁶ the assessment is flawed because it failed to extrapolate the survey data.

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

31. Design is an iterative process and there is nothing inconsistent, as recognised in NPPF in achieving development that makes efficient use of land whilst having high quality design and

²⁴ CD 9.6, para.14.218 139/222.

²⁵ General Matters SoCG 2.1(vi) 4/6

²⁶ SH Reb PoE 16/19.

securing high quality, beautiful and sustainable buildings and places. Specifically, Paragraph 124 of NPPF requires that decisions support development that makes efficient use of land taking into account, amongst other things, the importance of securing well-designed, attractive and healthy places. At Paragraph 125:

“Area-based character assessments, design guides and codes and masterplans can be used to help ensure that land is used efficiently whilst also creating beautiful and sustainable places. If there is an existing or anticipated shortage of land for meeting identified housing needs, it is especially important that planning policies and decisions avoid homes being built at low densities and ensure that development makes optimal use of the potential of each site.”

32. In that context, Paragraph 126 states:

“The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.”

33. The importance of design in the context of sustainability in the NPPF is clearly set out in Paragraph 134 that states:

“Development that is not well designed should be refused, especially where it fails to reflect local design policies and Government guidance on design. Conversely, significant weight should be given to:

- (a) development which reflects local design policies and Government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes; and/or*
- (b) outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings.”*

34. Prior to the submission of the appeal against non-determination, the LPA had been provided with a comprehensive suite of design related documentation setting out matters of context, the wider context within which the AS should be considered and the design rationale for the proposal²⁷.

²⁷ CD 6B.13(a), 6B.13(b) and 6B.13(c).

35. It is noteworthy that the LPA did not reference local design criteria established in the Essex Design Guide²⁸. The EDG is a bespoke design development tool for development in Essex and an iteration of it has been adopted by the LPA to establish and maintain design standards which still resonates as being consistent with the NPPF and the National Design Guide²⁹. Its introduction provides:

“It is used as a reference guide to help create high quality places with an identity specific to its Essex context. The preceding publication was released in 2005. The 2018 edition seeks to address the evolution of socio-economic impacts on place-making.”

36. In this regard, the Scheme Architect has provided detailed and comprehensive design evidence to the RT session.
37. The Council contends that the development is not beautiful. However, the proposed design has been developed through a rigorous contextual analysis process that has taken its material and detailed cues from exemplar buildings and developments of Tiptree, all of which are supported by the EDG. The Appellant has made further commitments to ensuring this level of quality is delivered through the inclusion of conditions relating to material construction detailing.
38. During the RTS the Council asserted that there was a lack of obvious character in Tiptree, and presented very little in the way of exemplar context themselves in their evidence. Looking east at Maple Leaf or Walnut Tree Way and more recent examples in Tiptree, this is precisely the suburbia that SC wants to avoid. Consequently, referencing EDG and the application of a bespoke design approach is not only contextually appropriate but can only be seen as an improvement upon the current existing character in accordance with the National Design Guide.

Context

39. Context is the appropriate starting point for any assessment of design. It is the Appellant’s case that the LPA’s assessment is demonstrably incorrect when considering the context of the site as essentially countryside. The site’s immediate context is one of poor quality and it does

²⁸ CD 12.7.

²⁹ CD 12.2.

not perform a transitional road between the open countryside to the north and west and the more intensive development to the south. It is a partly brownfield site containing a range of buildings and features. Development now almost entirely encircles the site with the Tower Business Park to the north and the Grange Road residential development to the south and west of the site. The previous iteration of the NP proposed that land lying to the west of the AS was identified as appropriate for further additional residential development without criticism from the design professionals at the LPA. As previously noted, the LPA accept that the Appeal Site is located within the broad area of growth shown on the Tiptree proposals map. There is no objection to the principle of residential development.

40. As is clear from walking the site the Council's assessment in relation to the constituent elements of its context has been selective and misrepresents the site as being within or on the edge of the open Countryside. What is abundantly clear is that the site is confined on the majority of its boundaries by existing and proposed built residential and commercial development.
41. The Council has pointed to recent developments being of a lower density. However, these examples generally have artificially reduced densities by giving way to large areas of land to open space and allotments. When comparing built form the grain of development is comparable to the proposed site.
42. On that basis, the consideration of existing built development along Oak Road and the areas adjoining the AS is a contextually more appropriate response. It:
 - dictated a strengthening of the built form by proposing dwellings of appropriate scale along the established building lines;
 - having a landmark building at the proposed gateway to the development of the AS.
43. Such an approach is entirely consistent with Paragraphs 3.27/3.28 of the EDG. Furthermore, having regard to the storey heights proposed at the Grange Road residential development, it would be inappropriate to reduce scale at that location. There is no compelling design rationale why the existing elements of the AS should have any bearing on the design approach to the redevelopment of the site and in evidence the point is made that their removal

represents an opportunity to “significantly improve the street-scene and therefore the Northern Gateway into Tiptree”³⁰.

44. The Appellant’s evidence further rebuts the comments contained in the annotated site layout in the evidence of the LPA³¹.

Identity

45. The LPA’s case also refers to the height of the proposed flat blocks A and C which are not characteristic of Tiptree because they contain three-storey elements. As pointed out in the Appellant’s rebuttal, this is contradicted by evidence of recent development, including that at Nine Acres on the edge of an obvious countryside location. Furthermore, the three-storey development is of an appropriate scale, height and mass in this location and the Council’s argument is unconvincing. At the adjacent Grange Road residential scheme some of the homes are proposed at 2.5 storeys, there being a number directly adjacent to the application site. The components of the design of the AS development rely upon appropriate examples of recent development throughout Tiptree. It uses the same palette of materials and details.
46. The council maintain that 3-storey development was inappropriate for this location. However, they failed to acknowledge key contextual examples of buildings of height in the sites vicinity, including Aspire House at Tower Business Park, the Pumping Station on Grange Road and the 2.5-storey dwellings at Grange Road all of which are visible from within the site.
47. The criticisms of the Public Open Space provision is also unconvincing and without merit. The scheme provides a large truly multi-purpose open space able to accommodate the needs of residents of all ages. Indeed, the EDG recognises that the “*most effective public open spaces are large, multi-purpose, informally supervised parks.*” The POS is overlooked by the development enhancing security and surveillance and will discourage antisocial behaviour.

Built Form and Movement

48. Contrary to the LPA’s analysis, pedestrians and cyclists have multiple routes through and around the development. The development also proposes a crossing point across Kelvedon

³⁰ DP Reb PoE, para.11.

³¹ DP Reb PoE, para.15 et seq.

Road and the widening of the footpaths bordering the site by promoting pedestrian and cycle connectivity.

Nature

49. The evidence submitted by the Appellant suggests that there will be improvements to the environment. A BNG in excess of 20% can be properly anticipated as a consequence of the implementation of the proposals.

Public Spaces

50. The LPA's case that provision of the LEAP could discourage senior adult use for tranquil reflection is unsupported by any evidence whatsoever and would suggest that the Council's approach would be one of excluding social interaction. There can be no logical or policy based criticism of the use of the Open Space for the SuDS retention basin.

Uses

51. As the principle of residential development of the AS is accepted, the criticism that a residential "monoculture" would be provided is, at the very least, inconsistent. The appeal proposal provides an integrated mix of tenures and housing types reflecting local housing need and market demand. This effort to deliver a scheme that fulfils the requirement of contributing to meeting local housing need has resulted in the density proposed, not a commitment to hitting fixed numbers as suggested. It is proposed that there be on-site, tenure blind affordable housing at a policy compliant 30%. This together with a range of house types will provide an inclusive community capable of meeting the changing needs of different ages and abilities.

Homes and Buildings/Resources

52. The Appellant has demonstrated a commitment to wheelchair accessibility within the development. 70 of the 130 dwellings proposed have been designed to the relevant Category M4(2) and M4(3) standards including all of the proposed affordable homes. This amount exceeds – by a considerable margin – the Council's requirements. The changes to Building

Regulations during the course of the determination of the application reflected in the current design proposal. These are set out in the Appellant's evidence³².

Lifespan

53. The criticism by the LPA that the scheme is unadaptable in terms of the design of units and the layout of the scheme is unsupported by evidence. In terms of layout adaptability, the primary access road through the development and the junction at the site access have been provided with generously wide settings to enable the future widening to serve development to the west should the need for such be established. In addition, the possibility of an access point to the northern field has also been retained. In addition, the dwellings provide in excess of the Nationally Described Space Standards and garden sizes are compliant - with the majority being in excess of the requirements of Local Policy. Future residents would have the ability, should they wish, to extend their homes.
54. In terms of landscape, the submitted landscape assessment by CB on behalf of the LPA proceeded on similar misapprehensions as the design criticism. In particular:
- The density is 25 dph rather than the 30 dph;
 - Consistent with the views of the Council's own Landscape Officer, the proposals have retained the majority of the mature hedgerows on site and failed to acknowledge the proposed reinstatement and planting of new hedgerows and trees;
 - It allows for connectivity to the wider areas and in particular those lying to the west of the AS.
 - There will be an increase in canopy cover.
55. The LVIA prepared as part of the application³³ provides a comprehensive and robust assessment of visual effects and impact on landscape character. It recognises that the AS comprises partly previously developed land with existing residential houses, associated outbuildings, structures and hardstanding, horse paddocks, fields and dense boundary

³² DP Reb PoE, para.26 38/46.

³³ CD 6B.5(a), 6B.5(b) and 6B.5(c).

hedgerows with trees. Mitigation measures have been incorporated into the proposed development to reduce the effects on both landscape and visual amenity and to help to integrate the proposed development into the surrounding landscape. The consequence of the proposals is that over time the effect on the local landscape character would be Slight Adverse Effect³⁴. The VPs identified there is a range of significance between Moderate to Negligible Effect as the scheme matures. The effect is considered to reduce to a range of Slight Adverse Effect to a Negligible Effect³⁵.

56. Thus, the landscape effects are considered to be limited and localised in the context where there has been a significant amount of change.

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

The Tilted Balance

57. The parties do not agree on the issue of whether the tilted balance in Paragraph 11 of NPPF is engaged in this case. To an extent, the issue is of less immediate relevance in circumstances where the LPA, on a flat balance, consider that the redevelopment of the site for residential purposes is acceptable in principle.
58. Nevertheless, it is considered appropriate to address it in circumstances where the eLP is advanced. Policy SS14³⁶ has as part of the emerging policy:

“Proposals for development outside of the settlement boundary, or settlement boundary defined by the Tiptree Neighbourhood Plan once adopted, will not be supported.”

59. It forms no part of the Council’s case to contend that the above is a basis for refusing the appeal application³⁷.
60. The key to the Plan³⁸ identifies the settlement boundary that was fixed a decade ago and the arrows indicating the proposed areas of growth. The adoption of the Plan with a settlement boundary fixed by a previous iteration of the Statutory Development Plan and to meet housing

³⁴ CD 6B.5(a), para.7.1.5 34/37.

³⁵ CD 6B.5(a), para.7.1.6 34/37.

³⁶ CD 9.5 141/222.

³⁷ JR Response to Inspector’s Q

³⁸ CD 9.6.

requirements unrelated to the eLP is out-of-date. It is out-of-date because the Policy SS14 itself recognises that the settlement boundary is not “fit for purpose” in that it is incapable of accommodating the growth required to be met in the eLP. Hence the obvious recognition that the boundary will change (and will have to change) in the NP.

61. The versions of the existing Statutory Development Plan are out-of-date. The evidence of JF³⁹ identifies the most important policies for determining the application.
62. The LPA case is that the “most important” policies are those relevant to the appeal. With respect, that is a misapprehension and misunderstanding of the Framework. In the context of the Framework, it is the most important policies for determining the application. That is not the same as engaging with all policies capable of being relevant for an appeal. The most important policies will relate to the principle of development including the spatial hierarchy and principles of sustainability.
63. TIP1 dealt with residential sites in Tiptree in the Site Allocations DPD October 2010⁴⁰. That DPD was aligned with the Core Strategy housing requirement. The housing requirement has been replaced by that in Policy SP4 in Section 1 of the Local Plan⁴¹. As previously referred to in this Closing, the replacement 920 dpa housing requirement must also be regarded as a minimum. It follows that the housing requirement in the Site allocations DPD is out-of-date. The existing settlement boundaries that were predicated on the CS and the Site Allocations DPD must also be considered as out-of-date. The Plan period ended in 2021⁴². The Policy TIP2 dealt with the existing transportation issues involving the highway network at that time. These have been overtaken by events and are therefore out-of-date. Policy DP5 deals with the Local Development Framework⁴³ with the site allocated for employment purposes. However, as is clear from the LPA evidence to the Inquiry and generally, there is no reliance upon that part of the AS bearing an industrial designation. In 2015 the Council produced an Employment Land Needs Assessment and regarded the Tower Business Park as fully developed. It is also the case that the conclusion was that the supply is adequate to meet

³⁹ JF PoE 7.14.

⁴⁰ D 8.3.

⁴¹ CD 9.1.

⁴² CD 8.3 5/96 and CD 8.2 6/93.

⁴³ CD 8.2.

need. The part of the AS does not contribute to the LPA's calculation of industrial land supply. Nor is there any scope to develop the fields where the allocation currently lies⁴⁴.

64. Unsurprisingly, in these circumstances it is no part of the Council's case to resist the appeal proposals on employment land grounds⁴⁵.
65. The Site Allocations DPD⁴⁶ provides an allocation for Gypsy Accommodation. The appeal proposal ensures that there will be no net loss of Gypsy provision.
66. Once again, and again unsurprisingly, it informs no part of the Council's case to resist the appeal proposals on the basis of any issue concerning Traveller Accommodation⁴⁷.
67. Policy ENV1 of the Core Strategy⁴⁸ references settlement boundaries and states that unallocated greenfield land outside such boundaries will be protected and where possible enhanced. As previously referenced, the settlement boundaries are now approximately 12 years old and accepted by JR in evidence as out of date. The settlement boundaries being out of date is also acknowledged in emerging policy as they are required to be reviewed in order to accommodate the needs that have been identified.
68. Thus, when considering the policies that go to the heart of the issues that have to be grappled with in terms of determining the application, the relevant policies of the Statutory Development Plan are out-of-date.
69. Furthermore, insofar as the eLP Policy SS14 is concerned, insofar as it holds to a settlement boundary that is the same as the previous iterations of the Development Plan that are recognised as being out-of-date it cannot "breathe new life" into the boundaries that are recognised to be unsuitable and inappropriate to accommodate the needs of the Borough.

⁴⁴ CD 13.6.

⁴⁵ JR Xx.

⁴⁶ CD 8.3.

⁴⁷ JR Xx.

⁴⁸ CD 8.1 76/107

Planning Balance

70. The LPA and Appellant agree that the AS sits within a preferred area of growth for the village of Tiptree. The eLP policy is clearly expressed as a minimum - reflected in a change required by an MM. It necessarily means that the requirement for 400 dwellings is a floor, not a ceiling. On the basis of the eLP there is not a numbers case against the appeal proposal⁴⁹ and it is no part of the LPA's case that the appeal proposal should be rejected because there is an upper limit on the number of houses that could be accommodated.
71. The AS is consistent with the spatial priorities in the eLP, development in the Borough generally and Tiptree in particular.
72. The contribution to both market and affordable housing is an undoubted benefit.
73. Subject to the Council's case on Policy ENV1⁵⁰, the Council accepts the proposal accords with the provisions of the Development Plan⁵¹.
74. The development is in a sustainable location. Tiptree is recognised to be a sustainable settlement and one appropriate to accommodate further growth. The spatial priorities for Tiptree were identified in SS14 of the eLP and the AS sits in a preferred area of growth and thus a benefit of the proposal is that it reflects the spatial strategy in the eLP that is itself embedded in sustainability considerations. The TA⁵² demonstrated that the appeal site is a suitable location for delivering sustainable development and it has the benefit of being accessible to a full range of key services and amenities. The development is also in accordance with the sustainability framework. Therefore contrary to the point asserted by SC at the design RT the development is a sustainable one across all measures.
75. Biodiversity Net Gain is an issue that is likely to be a statutory requirement in the not too distant future. For the purposes of this appeal, it is a relevant consideration. There is no specific requirement for the Statutory Development Plan to achieve a measurable quantity of BNG. The emerging Development Plan seeks 10% in accordance with the forthcoming statutory obligation. Nevertheless, in anticipation of Part 6 of the Environment Act 2021

⁴⁹ JR Xx.

⁵⁰ In this context, Policy ENV1 is that of the eLP, CD 9.5 45/222.

⁵¹ JR Xx.

⁵² CD 4.3 paragraph 7.3

becoming law, the submitted information includes that a significant BNG in excess of the 10% minimum requirement can be achieved on site. In the Uttlesford appeal referred to by JF, a BNG of 20% was accorded significant weight in the planning balance.

76. The proposal represents an efficient use of land consistent with NPPF. The site is part PDL including existing buildings, part allocated for employment and allocated and used as Gypsy Traveller accommodation. The development proposal is 25.24 dwellings per hectare. In terms of highways and transportation, a benefit will be an improved crossing and footways that will benefit both future residents and the wider population. At the moment there is no footway on the north side and the southern footway is narrow. This will be improved by the appeal proposal consistent with the planning obligation.
77. Paragraph 81 of NPPF identifies that “significant” weight should be placed on the need to support economic growth and productivity. The Appellant’s evidence⁵³ relies upon HBF analysis that suggests that 130 homes during a three year build programme would employ approximately 403 people. In addition, it would generate tax and Council tax revenue. Future residents would contribute to the viability and vitality of Tiptree in expenditure on goods and services. The planning obligations, whilst meeting the statutory requirements in the Community Infrastructure Regulations, will have wider benefits to the community including parks and recreation contribution, open space, maintenance, highway and accessibility improvements and £350,000 community facilities.
78. At Paragraph 7.27 of JF’s rebuttal PoE information is provided that sets out the relevant material considerations and the response of the Appellant’s and the LPA witness in terms of the weight ascribed to the various material considerations. It is submitted that the analysis by JF is balanced, consistent with SoS and Inspectorate decisions, consistent with the approach adopted in the NPPF and is balanced in recognising the disbenefits and adverse impacts associated with the development proposal.

Conclusion

79. The LPA’s case acknowledges that the principle of residential development of the AS is not in dispute. The only issue between the parties relates to design.

⁵³ JF PoE 8.100.

80. Design was addressed in the pre-appeal documentation submitted by the Appellant. A comprehensive suite of documents including a design rationale, a LVIA and DAS was provided.
81. The evidence of DP and JF during the course of the design RT is, it is submitted, compelling. The proposal results in a high quality, contextually appropriate and beautiful and sustainable development.
82. In these circumstances, the Inspector is invited to allow the appeal and grant planning permission.

JOHN BARRETT

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