

Proof of Evidence

James Ryan

Colchester Borough Council

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.

LPA Ref: 190647

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1.0 Introduction

- 1.1 My name is James Ryan. I am a Planning Manager with responsibility for the South Team at Colchester Borough Council.
- 1.2 I hold a BSc (Hons.) Degree in Geography from Queen Mary College, London, an MSc. In Spatial Planning from University College London and I am a member of the Royal Town Planning Institute.
- 1.3 I have worked at Colchester Borough Council for over 6 years in Development Management. Prior to that I worked at Tendring District Council for 6 years in Development Management. Prior to that I worked at a City Law Firm.
- 1.4 I have very good local knowledge of the Borough including Tiptree. I am familiar with the site and its surroundings and with the plans and documents relating to this Inquiry.

2.0 Scope and Structure of my Evidence

- 2.1 My evidence addresses the status of the policies referred in in the Reason for Refusals) and the planning balance exercise undertaken in accordance with s.38(6) (Planning & Compensation Act 2004) concludes properly that the adverse impacts of the proposal demonstrably outweigh the benefits and the proposal does not represent sustainable development.

2.2 I have relied on the evidence of Bethany Jones and Cristina Howick in respect of housing need, Simon Cairns in respect of design matters and associated landscape matters. Highway safety matters, otherwise addressed by Martin Mason from Essex County Council, have been resolved.

2.3 My evidence is presented under the following sections:

- Section 3 – describes the appeal proposal;
- Section 4 – outlines the relevant planning history of the site
- Section 5 – refers to relevant national and local policies and assesses the weight that should be afforded to them
- Section 6 - provides an analysis of the main planning considerations in the determination of the appeal
- Section 7 – provides analysis of the planning balance and sustainable development
- Section 8 – summarises and concludes my evidence

3.0 The Proposals

Application description

3.1 The appeal proposal is for the 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.

3.2 The description of the proposal has been amended since original submission, which proposed up to 150 dwellings.

Site Location

3.3 The appeal site is located on Kelvedon Road on the outskirts of Tiptree village. The site wraps around but does not include the dwelling at 'The Gables' which also fronts Kelvedon Road. This means it has two separate sections of road frontage on Kelvedon Road on its eastern boundary. The site is adjacent to existing dwellings to the south, an industrial complex to the north and a PRow to the west with open countryside beyond.

- 3.4 A location plan is provided at CD 3.1
- 3.5 No pre-application discussions took place prior to submission with either the landowner nor applicant and the application was not subject to a planning performance agreement contrary to good practice (para.39-42 NPPF). The full application was registered on the 7.03.2019 and was thereafter subject to the orthodox advertisements and statutory consultation process.
- 3.3 The responses to these consultations revealed significant issues requiring resolution that precluded the timely determination of the application. These matters included sustainable surface water drainage (SUDS), highway matters and design.
- 3.4 This s.78 appeal against non-determination prevented the Council from formally determining the application. The LPA resolved under its adopted scheme of delegation on the 12 August 2021 that had it been in a position to determine the application, it would have refused planning permission on the basis of four substantive reasons.

4.0 Planning History

- 4.1 There is no planning history particularly relevant to this site. Part the land for parking vehicles / trucks and storage of mowers was approved in 1992 (ref: COL/92/0310) and this permission was renewed in 1997 (ref: COL/97/1580). Permission for two-storey side and rear extensions (F/COL/03/0351) and a boot room have also been granted (ref: 101741) more recently for the existing residential use on the site. Permission has been previously granted for a conversion of a single storey garage into a residential annex (F/COL/06/1390) on part of the site. Another part of the site also had an application and appeal dismissed for the erection of one dwelling on highway related matters (ref: COL/94/1556 & T/APP/A1530/A/95/252398/P7).
- 4.2 Outline planning permission for residential development has been granted on land adjacent to the site at north and south of Grange Road for the erection of

103 dwellings with areas of Public Open Space, provision of a new roundabout access and other ancillary infrastructure and works including drainage provision (ref: 122134). A reserved matters application has been approved subsequently and construction of this development has commenced (ref: 151886). This site is included within the development boundary in the emerging Local Plan Policies Map.

5.0 Relevant National and Local Policies

The Development Plan and the Plan Led System

- 5.1 This section explains the Development Plan relevant to the appeal and will address the weight that can be afforded to those policies.
- 5.2 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states: If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.
- 5.3 If a proposal accords with an up-to-date development plan it should be approved without delay as stated in National Planning Policy Framework (NPPF) paragraph 11c, and development that conflicts with the Local Plan should be refused – unless material considerations indicate otherwise. It further states in Paragraph 12 that “the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted.”
- 5.4 The appeal should be determined in accordance with the development plan and the recently revised NPPF.
- 5.5 The development plan for Colchester is the Adopted Local Plan (2008, 2010, 2014 and 2016) and Section 1 Local Plan (2021). The Local Plan for Colchester, and those policies most relevant to determination of this appeal in particular (NPPF paragraph 11(d) refers), are not considered to be out-of-date, in so far as they relate to this appeal. I consider the policies material to this appeal are:

Core Strategy (2008) as amended by the Focused Review (2014)

SD1 - Sustainable Development Locations

H1 - Housing Delivery (including Table H1a)

ENV1 – Environment

UR2 – Built Design and Character

Site Allocations (2010)

SA H1 - Housing Allocations

Development Policies (2010)

DP1 - Design and Amenity

North Essex Authorities' Shared Strategic Section 1 Local Plan (2021)

SP1 – Presumption in Favour of Sustainable Development

SP2 – Recreational disturbance Avoidance and Mitigation Strategy

SP4 – Meeting Housing Needs

SP7 – Place Shaping Principles

- 5.6 The Colchester Emerging Local Plan 2017-2033 (Submitted October 2017) is also a relevant document. On 1st February 2021, Full Council resolved to adopt the Section 1 Local Plan in accordance with Section 23(2)(b) of the Planning and Compulsory Purchase Act 2004. The Section 1 Local Plan is a joint document Tendring District Council and provides the strategic spatial overview for the three authorities and contains policies for the Tendring Colchester Borders Garden Community.
- 5.7 The Section 2 Local Plan provides specific policies and allocations to the Colchester Borough only. This has been examined separately to the Section 1

Local Plan with hearing sessions held for a two-week period in April 2021. The Council consulted on the Inspector's Main Modifications (and associated Sustainability Appraisal and Habitats Regulations Assessment) for a six week period from 4 October to 15 November 2021.

The policies material to this appeal are:

SG1 - Spatial Hierarchy

SG2 - Housing delivery

ENV1 - Environment

PP1 - Generic Infrastructure and Mitigation Requirements

SS14 - Tiptree

DM15 - Design

5.8 The weight that can be afforded to these policies will be addressed in turn, including reference to the Inspector's suggested Main Modifications (MM) in respect of the Section 2 Emerging Local Plan. Whilst all of the policies above will be discussed below, the most important policies in relation to this appeal are held to be SP7 from the Section 1 Plan, ENV1 and UR2 from the Adopted Core Strategy, DP1 from the Development Policies Document and ENV1 and DM15 from the emerging Section 2 Local Plan.

5.9 Reference will also be made to a number of material considerations, including the following;

The National Planning Policy Framework (2021)

Planning Practice Guidance

The National Design Guide

Core Strategy (2008 as amended by Focused Review 2014)

5.10 The Council has defended a number of Planning Appeals during the last couple of years, which have been in conflict with key Policies SD1, (H1) and ENV1 of

the Adopted Local Plan in addition to other site-specific policies which may apply to each case. Regardless of the outcome of the appeal decision, a consistent conclusion of the extent to which elements of these key policies are up-to-date and consistent with the NPPF has emerged.

SD1 - Sustainable Development Locations

5.11 SD1 provides the overarching spatial strategy for the whole borough and sets out that the Council will promote sustainable development in accordance with the spatial strategy and hierarchy outlined in the policy. Therefore, SD1 is a key spatial policy. It promotes the spatial hierarchy with Colchester Town Centre and Stanway at the top and the villages towards the bottom in the order of Regional Centres, District Centre and then Rural Communities. This policy has been partly superseded by the recently adopted Section 1 Local Plan policies SP1 and SP2.

5.12 The following text is superseded:

Colchester Borough Council will promote sustainable development and regeneration to deliver at least 14,200 jobs between 2001 and 2021 and at least 19,000 homes between 2001 and 2023.

When considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. It will always work proactively with applicants jointly to find solutions which mean that applications can be approved wherever possible and to secure development that improves the economic, social and environmental conditions in the area.

Planning applications that accord with the policies in this Local Plan (and, where relevant, with policies in neighbourhood plans) will be approved without delay unless material considerations indicate otherwise.

5.13 A recent planning appeal at Barbrook Lane, Tiptree (APP/A1530/W/19/3223010, CD 7.1) concluded at para 144 of the decision that

'Policy SD1 is out of date in respect of its figures for the number of homes and jobs that should be delivered. It is also out of date by requiring a sequential approach that gives priority to previously developed land. However, I find no significant conflict with the Framework in respect of the settlement hierarchy and the protection of the character and vitality of small towns, villages and the countryside'. As a result the following wording of policy SD1 is considered out of date:

- 5.14 *Development proposals will be expected to make efficient use of land and take a sequential approach that gives priority to accessible locations and previously developed land (PDL). The remaining elements of policy SD1 are up to date and held to accord with the NPPF.*
- 5.15 *The Maldon Road appeal (APP/A1530/W/20/3248038 CD 7.2) also looked at SD1. At paragraph 68 the Inspector stated: 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. I consider that the remaining elements of the policy can be afforded moderate weight however it is noted that it was not used as a reason for refusal of the appeal scheme.*

H1 - Housing Delivery (including Table H1a)

- 5.16 H1 is a Core Strategy Policy (2008, 2014) that outlines with the level of housing that is to be delivered in the Borough, in accordance with the spatial strategy and settlement hierarchy set out in Policy SD1. This policy has been partly superseded by the recently adopted Section 1 Local Plan policies SP3 and SP4. The following text has been superseded:

The Borough Council will plan, monitor and manage the delivery of at least 19,000 new homes in Colchester Borough between 2001 and 2023.

The Council will also ensure that a sufficient supply of deliverable and developable land is available to deliver over 830 new homes each year.

- 5.17 As above with SD1, Policy H1 has been considered through the Barbrook Lane appeal. The Barbrook Lane Inspector concluded at para 144 “*CS Policy H1 indicates that the overall distribution of new housing will be guided by the Settlement Hierarchy and this is consistent with the Framework. As the site is outside of any settlement and is not an allocated housing site, it is not in a place where CS Policies SD1 and H1 encourage growth and therefore conflicts with these policies*”.
- 5.18 The Secretary of State also agrees with the Inspector regarding the element of Policy SD1 which is considered out of date and that the remaining portion of Policy SD1 and H1 are consistent with the NPPF and therefore remain up to date. This is outlined in paragraph 22 of the Decision Letter. “*The Secretary of State notes the Inspector found the housing number and sequential approach elements of SD1 out-of-date and agrees with her in finding no significant conflict between the settlement hierarchy and character protection aspects and the Framework. He also notes that CS H1 indicates that the distribution of new housing should be guided by the settlement hierarchy and agrees with the Inspector’s finding of this as consistent with the Framework (IR144)*”.
- 5.19 The Maldon Road appeal also looked at H1. At Paragraph 69 the Inspector stated: *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. Therefore, the only elements of Policy H1 which are not relevant to this appeal are those that relate to housing numbers which have been superseded by the Section 1 Local Plan. The main thrust of policy H1 is held to accord with the NPPF. The Policy can be afforded moderate weight; however it is noted that it was not used as a reason for refusal of the appeal scheme.

ENV1 - Environment

- 5.20 ENV1 deals with environmental matters. It underpins the approach to the conservation and enhancement of Colchester's natural and historic environment and requires development on unallocated greenfield land outside of settlement boundaries to be protected and where possible enhanced, in accordance with the Landscape Character Assessment.
- 5.21 The Barbrook Lane Inspector concluded at para 145 "*CS Policy ENV1 seeks to conserve and enhance Colchester's countryside. It says that unallocated greenfield land outside of settlement boundaries will be protected and where possible enhanced. This policy also seeks to strictly control development on such land. The Framework does not make a such a prohibitive requirement but says that planning policies and decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside. However, whilst Policy ENV1 is somewhat more onerous than the requirement of the Framework, the broad aim of Policy ENV1 of protecting the character of the countryside is still relevant to this appeal*".
- 5.22 The Inspector goes on to state "*Furthermore, CS Policy ENV1, as discussed in Paragraph 148, is inconsistent with the Framework and is also out of date*

but I attach moderate weight to this policy in so far as recognising the intrinsic character and beauty of the countryside”.

5.23 The Secretary of State reaches the same conclusion regarding the extent to which Policy ENV1 is more onerous than the NPPF, at paragraph 23 of the decision letter *“The Secretary of State also notes that CS policy ENV1 states that unallocated greenfield land outside settlement boundaries is to be protected and where possible enhanced, and to strictly control development on such land. He agrees with the Inspector that this is somewhat more onerous than the Framework, but that the broad aim of protecting the character of the countryside is relevant to this appeal”.*

5.24 The Maldon Road appeal also looked at ENV1 but took a stronger line in terms of the weight that could be afforded to it. At paragraph 69 the Inspector stated: *64. In the Barbrook Lane case, and also in some other recent appeal decisions 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. As a result this policy can be afforded moderate to full weight. The NPPF seeks to preserve the Countryside for its intrinsic benefit at Para 174b, and the sentiments of this policy accord with this. It is however noted that the spatial element of this policy was not used as a reason for refusal with regards to the appeal scheme.

UR2 – Built Design and Character

- 5.25 UR2 deals with design and character. It accords with the recently amended NPPF (2021) as it seeks to promote and secure high quality and inclusive design in all developments to make better places for both residents and visitors. It requires the design of development to be informed by context appraisals and should create places that are locally distinctive, people-friendly and which enhance the built character and public realm of the area, all of which is held to be highly relevant to this appeal and the design reason for refusal. This matter has been dealt with in detail in Simon Cairn’s Proof of Evidence.
- 5.26 This policy can be afforded full weight as it is wholly consistent with the Framework, particularly due to the strengthening of the importance of design in the recent NPPF amendments.

Site Allocations (2010)

SA H1 Housing Allocations

- 5.27 Policy SA H1 allocates a number of sites for residential development across the borough. It does not allocate the appeal site for development, but it is not held to carry significant weight in this appeal in any event. It is noted that the policy was not used as a reason for refusal of the appeal scheme.

Development Policies (2010)

DP1 – Design and Amenity

- 5.28 DP1 sets out the need for high quality design and placemaking and required development to prevent impact on neighbours. It is wholly in accordance with the NPPF 2021 in so far as it clearly requires good design. I consider that that the

2021 amendments to the NPPF put the greatest emphasis on design seen in national policy for a number of years. NPPF Paragraph 126 states:

The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve.

5.29 I note the introduction of 'beautiful and sustainable' in the latest NPPF update.

5.30 Paragraph 130 (formerly paragraph 127) remains unchanged from the previous iteration of the framework and states:

Planning policies and decisions should ensure that developments: a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development; b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping; c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities); d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit; e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

5.31 Paragraph 134 states:

Development that is not well designed should be refused....

It is my opinion that this represents a step change in the importance of design. The wording of UR2 reflects the sentiments of the framework very clearly. It is extremely relevant to this appeal as it is, in effect, a design-based refusal. I note

that Simon Cairns deals with this matter in significant detail in his Proof of Evidence.

Section 1 Local Plan 2021

SP1 – Presumption in Favour of Sustainable Development

5.32 SP1 is an overarching policy that requires development to accord with the Framework. It states:

When considering development proposals the Local Planning Authorities will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. They will always work pro-actively with applicants to find solutions which mean that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area.

5.33 By virtue of the fact this policy directly reflects the NPPF it is held to be wholly up to date. The very recent nature of the adoption of the Section 1 Local Plan further strengthens my opinion on this matter. The policy is quite relevant to this appeal as the NPPF 2021 has been strengthened in terms of design. To meet the sentiments of the Framework, development must be well designed and beautiful. Full weight can be afforded to this policy.

SP2 – Recreational disturbance Avoidance and Mitigation Strategy

5.34 SP2 sets out the Council's approach to ensuring off site impact to protected areas are satisfactory mitigated and the mechanism to archive that aim is detailed in the strategy. The policy states:

Contributions will be secured from development towards mitigation measures in accordance with the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy 2018-2038 (RAMS).

5.35 The strategy has been adopted as a Supplementary Planning Document (SPD) by the Council in August 2020. The RAMS SPD focuses on the mitigation that is necessary to protect the wildlife of the Essex coast from the increased visitor pressure associated with new residential development in-combination with other plans and projects, and how this mitigation will be funded. The RAMS

SPD sets out the guidance to be followed in the determination of planning applications and formalises the arrangements for securing the developer contributions for new qualifying residential development.

5.36 This Policy is up to date as both the Policy and the SPD were very recently adopted. It carries full weight in my opinion. It is relevant to this appeal as it was used as a reason for refusal. However, it is foreseen that this will be addressed via the completion of the Section 106 agreement prior to the Inquiry.

SP4 – Meeting Housing Needs

5.37 SP4 outlines out the how the Council will meet its housing requirement. The policy states:

Each authority will maintain a sufficient supply of deliverable sites to provide for at least five years' worth of housing, plus an appropriate buffer in accordance with national policy, and will work proactively with applicants to bring forward sites that accord with the overall spatial strategy and relevant policies in the plan.

5.38 SP4 sets out the requirement of 920 houses per year and a total of 18,400 for the whole plan period (2013 to 2033) for Colchester Borough. It is highly relevant for this appeal as it clearly sets the number from which the Council's five-year supply is derived.

5.39 The need for a five-year supply of housing land (plus buffer) clearly reflects the requirements of the Framework. The policy is wholly up to date as it was very recently adopted by the Council. As outlined above, Policy SP4 supersedes the housing requirement figures of Core Strategy policy H1. Policy SP4 policy therefore carries full weight.

SP7 – Place Shaping Principles

5.40 SP7 provides the requirements for good quality design that create places that function well and are visually attractive. The first line of the policy reads as:

All new development must meet high standards of urban and architectural design.

The policy then sets out 12 place-shaping principles which all new development should reflect, where applicable. Simon Cairns deals with the matter of the design and compliance with SP7 in detail.

I set out what the NPPF has to say on design at section 5.28 of this Proof of Evidence and the text is equally relevant here. SP7 can undoubtedly be afforded full weight as it has been adopted by the Council in February 2021.

Emerging Section 2 Local Plan

SG1- Spatial Hierarchy

5.41 SG1 is a Section 2 Emerging Local Plan Policy that sets out the manner in which development will be directed in the Colchester Borough. Colchester Town Centre at the top of the hierarchy due to this sustainable location, followed by North Colchester/Stanway, the other sustainably settlements and then other villages at the lower end. Most relevant to this appeal is the acknowledgement that Tiptree is a sustainable settlement suitable for development. In my opinion this policy can be given a moderate to strong level of weight as it clearly complies with the sustainable development sentiments of the Framework. The policy is subject to modification MM3 however the changes have little relevance to this appeal and in my opinion to not change the overarching sentiments of the policy. This demonstrates that the EIP Inspector considered the majority of the policy to be sound which adds further weight to it.

SG2- Housing delivery

5.42 SG2 - is a Section 2 emerging Local Plan Policy Local Plan Policy that sets out the housing numbers for the various areas set out in SG1 above. In effect it divides the number from the fully adopted Local Plan Policy Section one SG1 and allocates housing numbers to specific areas. Most relevant to this appeal is the 600 dwellings allocated for Tiptree in the plan period as set out in the associated policy table which has been changed to a minimum of 400 dwellings via MM5 (see below).

- 5.43 SG2 is also subject to modifications. MM4 simply deletes the reference to the Colchester Braintree Garden Community and that has no bearing on this appeal.
- 5.44 Modification MM5 does have relevance to this appeal as it modifies the Table the accompanies SG2 and states: *Tiptree shown as 326 existing commitments and 400 allocations required.*
- 5.45 This is dealt with in Bethany Jones' Proof but it clearly demonstrates the 400 houses required for Tiptree in the plan period and that is also carried through in modifications to the Tiptree policy SS14 discussed later.
- 5.46 As this policy is derived from Section 1 Local Plan Policy and is only subject to relatively straightforward modifications, in my opinion this policy can be given a moderate to full level of weight.

SG7 - Infrastructure Delivery and Impact Mitigation

- 5.47 SG7 is a Section 2 emerging Local Plan Policy that sets out how development will only be granted if it can be demonstrated that there is sufficient appropriate infrastructure capacity to support the development or that such capacity will be delivered by the proposal. The Policy requires Developers to contribute towards the delivery of relevant infrastructure. This will either be via direct provision or they will be required contribute towards the provision of local and strategic infrastructure required by the development either alone or cumulatively with other developments. The policy is relevant to the appeal scheme as the lack of developer contributions was used as a reason for refusal, however a draft Section 106 agreement has been produced and it is therefore assumed that this matter will be dealt with prior to the Inquiry.

Modification MM12 requires the following text to be inserted into SG7:

Measures required to mitigate the impacts of recreational disturbance on habitats sites will be delivered as detailed in the adopted Essex Coast Recreational disturbance Avoidance and Mitigation Strategy.

- 5.48 This policy is relevant to this appeal as whilst the Council carried out an appropriate assessment that identified the need for a financial contribution to

the Essex Coast RAMS, no mechanism was put in place to collect it. As the lack of developer contribution towards the Essex Coast RAMS was used as a reason for refusal, however a draft Section 106 agreement has been produced and it is therefore assumed that this matter will be dealt with prior to the Inquiry.

5.49 This policy can be given moderate to full weight as it clearly complies with paragraph 34 of the NPPF (2021) and the modifications suggested align clearly with the Council's reason for refusal.

ENV1- Environment

5.50 ENV1 - is a Section 2 emerging Local Plan Policy that sets out how the Council will conserve and enhance Colchester's natural and historic environment, countryside and coastline. It looks to safeguard the Borough's biodiversity, geology, history and archaeology, which help define the landscape character of the Borough, through the protection and enhancement of sites of international, national, regional and local importance. It goes on to note how plans or projects, which may have a likely significant effect on a European site which have not been screened or considered in the Borough's Habitat Regulations Assessment or Appropriate Assessment, will be required to prepare a separate HRA screening and if necessary to complete a separate appropriate assessment to ensure compliance with the Habitat Regulations 2017.

5.51 This policy is relevant to this appeal as whilst the Council carried out an appropriate assessment that identified the need for a financial contribution to the Essex Coast RAMS, no mechanism was put in place to collect it. This was therefore used as a reason for refusal. A draft Section 106 agreement has been produced and it is therefore assumed that this matter will be dealt with prior to the Inquiry. It is also relevant for the reasons set out in Simon Cairn's Proof.

5.52 Modification MM20 sets out a number of modifications to Policy ENV1, and these amplify the need to protect designated sites, to comply with the Essex Coast RAMS, mitigate the impact on protected species and provide biodiversity net gain all of which are relevant to this scheme. As set out above however,

only the lack of contribution towards the Essex Coast RAMS was used as a reason for refusal.

5.53 This policy can be given moderate to full weight as it clearly stems from fully adopted Policy SP2 of the Section 1 Local Plan, and the modifications suggested only strengthen the wording of the policy in environmental terms. Further to this the policy is also needed to scheme such as the appeal site ensure compliance with the Habitat Regulations 2010.

PP1- Generic Infrastructure and Mitigation Requirements

5.54 PP1 is a Section 2 emerging Local Plan Policy that sets out the all proposals will be required to make contributions to the cost of infrastructure improvements and/or community facilities. It also requires development to demonstrate safe pedestrian access from the site to existing footways to enhance connectivity and suitable design.

5.55 The policy is relevant to the appeal scheme as the lack of developer contributions was used as a reason for refusal, however a draft Section 106 agreement has been produced and it is therefore assumed that this matter will be dealt with prior to the Inquiry. Further to this design is the key reason for refusal but that is dealt with in greater detail in other policies.

5.56 Modification MM26 has changed the wording of the policy to include Education contributions as that was missed from the submission draft. As above, the policy has also been modified to mention the Essex Coast RAMS.

5.57 This policy can be given moderate to full weight as it clearly complies with paragraph 34 of the NPPF (2021) and the modifications only strengthen the wording of the policy.

SS14 – Tiptree

5.58 SS14 is a Section 2 emerging Local Plan Policy that sets out the spatial strategy for Tiptree and is therefore very relevant to this appeal. The accompanying plan shows arrows setting out the broad area of growth for the village and the appeal site sits within the area indicated by the arrows. It states the Tiptree Neighbourhood Plan will allocated the housing land for the area. This matter is covered in detail in Bethany Jones' Proof.

5.59 The policy is subject to a number of Inspectors Main Modifications.

Modification MM71 proposes changes to SS14 the majority of which in my opinion guide the scope of any forthcoming Tiptree Neighbourhood Plan.

MM71 also sets out the requirement for a wintering bird survey for the site. This has now been provided.

It is noted that the 'broad areas of growth arrows' are retained and this appeal site witing the broad area of growth.

5.60 As set out in some detail in Chapter 5 of Bethany Jones' Proof, the planning approval at Barbrook Lane counts towards the 600 for Tiptree. This result in a housing need of 400 for Tiptree.

5.61 It is considered that this policy can be given significant weight in the determination of this appeal but it is noted that the Council have not refused the scheme on the basis of this of this policy. This is because the policy relies on the Tiptree Neighbourhood Plan but at the time of writing there is no Neighbourhood Plan in place for the reasons set out in Bethany Jones' Proof. I consider that the Council has correctly interpreted this emerging policy with regards to this site and in my opinion the appeal scheme is held to be in accordance with the sentiments of this policy.

DM15 - Design

5.62 DM15 is a Section 2 emerging Local Plan Policy that states development must be designed to a high standard, positively respond to its context, achieve good standards of amenity, and demonstrate social, economic and environmental sustainability. It goes onto state that poor design will be refused including that which

fails to take the opportunity for good design or improving the local area. It then sets out ten (modified to 12) detailed criteria that need to be met in order to comply.

The Inspectors Modifications at MM 89 add two further criteria:

xi) Encourage Active Design.

(xii) Provide a network of green infrastructure, open space and landscape as part of the design of the development to reflect the importance of these networks to biodiversity, climate change mitigation, healthy living and creating beautiful places.

5.63 I set out what the NPPF has to say on design at section 5.29 of this Proof of Evidence and the text is equally relevant here. This policy can be afforded full weight as it clearly complies with the recently revised NPPF (2021). It is also noted that the Inspectors suggested modification at criteria xii specifically mentions beautiful places and this is clearly to accord with the concept of beauty in the recently revised framework. As Simons Cairns has set out in his proof this is highly relevant to the appeal.

Summary

5.64 I have outlined above that the Development Plan is up to date and outlined the weight that can be afforded to the most important policies for this appeal, including those policies within the Section 2 Local Plan currently at examination.

5.65 The appellant states in their statement of case at paragraph 7.11 that: *'The most important policies within the adopted development plan for determining the subject application are out of date and for this reason the tilted balance is engaged'*. I strongly disagree with this view – bearing in mind also that it is agreed that the Council is able to demonstrate a deliverable 5 year supply of housing land as is now common ground.

Neighbourhood Planning

5.66 I consider it prudent to clarify the status of the Tiptree Neighbourhood Plan (TNP) as it is referred to in Policy SS14 detail above. The TNP, its history and status is set out in detail in Bethany Jones' Housing Need Proof. It appears

likely a new Draft Tiptree Neighbourhood Plan will reach regulation 14 stage and will be formally consulted upon imminently. This does not however change my thoughts on the matter. I have not seen a copy of the Draft Plan to date. Consequently, it is my opinion, that as it currently stands, the Tiptree Neighbourhood Plan cannot be given any weight in the determination of this appeal.

6.0 Planning Considerations inc. accordance with the development plan

6.1 I consider that the issues relevant to the consideration of this appeal are as follows:

- Housing need - considered by Bethany Jones and Cristina Howick
- Design of the development - considered by Simon Cairns and Catherine Bailey
- Habitat Regulations Assessment (RAMS) considered below
- Planning contributions – considered below

- Accordance with the development plan considered as a whole
- Whether the benefits of the development outweigh the adverse impacts themselves in conflict with up-to-date development plan policy – see section 7 below

Habitat Regulation Assessment (RAMS)

6.2 The Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) Strategy Document (2019) has been prepared by twelve Local Planning Authorities in Essex, including Colchester Borough Council. The aim of the RAMS is to deliver the mitigation necessary to avoid significant adverse effects from in-combination impacts of recreational development that is anticipated across Essex; to protect the Habitats sites on the Essex coast from adverse effect on site integrity.

6.3 The Essex Coast RAMS identifies a detailed programme of strategic mitigation measures which are to be funded by developer contributions from residential development schemes. The current tariff, as set out in the RAMS Strategy Document, is £127.30 per dwelling. This applies to all residential development within the Essex Coast Zone of Influence (Zoi). The whole of Colchester Borough is within the Zoi and so all residential development in Colchester Borough should make a contribution of £127.30 per dwelling to avoid and mitigate the impact of recreational disturbance in-combination with other projects and plans.

6.4 The Essex Coast RAMS SPD was adopted by CBC in May 2020. Due to the very recent nature of the adopted SPD, it is held to be fully up to date and can be afforded full weight in the decision-making process.

- 6.5 A draft section 106 agreement was sent to the applicants on the 23/08/2021 and this document includes payment of the RAMS contribution. Subject to this matter being secured within the s106 agreement satisfactory mitigation has been secured and Reason for Refusal 2 would fall away.

Planning Contributions

- 6.6 The Council is working with the appellant to agree a Section 106 agreement and as mentioned in paras 6.5 above a draft s106 was sent to them on the 23.8.2021. The financial contributions and on-site provision of open space as detailed in the Reason for Refusal 3 take account of the responses to the application which is the subject of this appeal. It is considered that the proposal, without these contributions and on-site open space provision, would have an unacceptable impact on social infrastructure that would serve the development. It would also fail to re-locate a Gypsy and Traveller Site. Justification for the contributions and compliance with the CIL is explained in the CIL charging schedule that will form a separate document.
- 6.7 A failure to enter into an appropriate undertaking would comprise another reason to withhold permission and would be contrary to the Framework.

Accordance with the development plan considered as a whole

- 6.8 It is important to consider the accordancy with the Development Plan when taken as a whole.
- 6.9 I note that the evidence of Simon Cairns convincingly demonstrated that the scheme is poorly designed, does not exhibit placemaking and is harmful to landscape interests.
- 6.10 In that respect the scheme clearly fails to comply with CS ENV1 and DP1 of the adopted Local Plan. It also fails to comply with SP1 and SP7 of the adopted Section 1 Local Plan. Finally, it fails to comply with ENV1 and DM15 of the emerging Section 2 Local Plan.

- 6.11 I do not consider there are any other policies in the adopted Local Plan, the Adopted Section 1 Local Plan or the Emerging Section 2 Local Plan that would point in the other direction and would suggest that that an approval is warranted.
- 6.12 Further to the above, I do not consider that there are any other material considerations that indicate that planning permission should be granted contrary to the Development Plan. My reasoned thinking behind this is set out in the following section that deals with the planning balance.

7.0 Planning Balance & Sustainable Development

- 7.1 The Council is required to determine planning applications in accordance with the Development Plan unless material considerations indicate otherwise. Both local and national planning policies promote sustainable forms of development and applications should therefore also be considered in this context. Notwithstanding the benefits claimed by the appellant, the Council considers there is significant conflict with the adopted development plan policies and the Framework 2021.
- 7.2 The Council has considered the benefits of the development and has balanced these against the adverse impacts of the proposed development and the conflicts with the development plan that arises from the adverse impacts, in doing so the Council conclude the adverse impacts would significantly and demonstrably outweigh the benefits, and, as such, the proposal would not amount to sustainable development under the terms of the Framework, taking into account its three dimensions as set out at Paragraph 8.

Appraisal of benefits

- 7.3 To ensure a comprehensive approach to the proposal, in reaching its decision in respect of this development proposal, the Council has balanced the identified breaches of the development plan (existing and emerging) and national planning policy alongside or against other material considerations

Sustainable Development

The duty in section 38(6) of The Planning and Compulsory Purchase Act 2004 enshrines in statute the primacy of the Development Plan. As an essential component of the 'plan-led' system, it is also reiterated in the Framework. Paragraph 8 of the Framework sets out the presumption in favour of sustainable development and defines 3 roles a development must fulfil in order to be sustainable

- **an economic objective** – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure
- **a social objective** – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and
- **an environmental objective** – to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

7.4 Achieving these three roles overall is imperative for any scheme to be considered acceptable. I will address each of these three strands of sustainable development.

7.5 The potential **Economic Benefits** are:

- The creation of new FTE jobs during the preparation, demolition and construction stage of the development and creation of jobs through the supply chain.

- The generation of additional spending in the local economy from new households and construction workforce that will support local business and shops.
- The generation of significant additional Council Tax receipts and New Homes Bonus Payments.

Council Response

- 7.6 It is accepted that there are economic benefits arising from the building of the houses through the construction phase, but these construction benefits are for a limited time only. These benefits would similarly be the result of any scheme and I afford the economic benefits moderate weight overall.
- 7.7 The scheme will help to sustain the viability of Tiptree's services and facilities.
- 7.8 It is also important to note that the economic benefits of the scheme would be likely to come forward at a time when Tiptree and the rest of Colchester Borough is emerging from the impact of the Covid-19 Pandemic. This increases the benefit the economic benefits of the scheme will have (though it remains limited). Colchester has a diverse and relatively resilient economy. This combined with significant investments from the Government's Town Deal (£19.2 million) and private sector investments in Ultrafast Broadband and 5G, means that Colchester is well placed to support economic recovery. Complementary to this growth is a steadily growing population, estimated to be at 197,200 in 2020 (CBC AMR 2020-21 CD 10.13).
- 7.9 As of March 2021, Colchester had 7,515 enterprises consisting of 8,795 local units. The type of enterprise is defined by the number of employees. A micro enterprise would have 0-9 employees, small 10-49, medium 50-249 and large being above 250. Micro enterprises are the most dominant across Colchester, making up 89% of total enterprises in 2021, and remaining largely the same as the 2019 figure of 88.8%. There is significant growth in the number of small businesses over the past year from 9% to 13.2%. The number of large enterprises continues to be below 1% of the total (CBC AMR 2020-21 CD

10.13). This is a buoyant picture in my opinion and in particular the growth in small businesses is impressive considering the Covid-19 Pandemic.

7.10 Whilst I accept this scheme will bring new residents and they may potentially support local and boroughwide businesses, I do not consider that the sum of the economic benefits at paragraphs 7.6 to 7.9 above attract more than moderate weight overall.

The **Social Benefits** of the scheme:

- Delivery of 130 homes including 30% Affordable homes

Council Response

7.11 I note the evidence provided by Beth Jones and Cristina Howick on the matters of market housing and affordable housing and I rely on that evidence which I find convincing. The addition of market housing to the overall supply would be a social benefit, but I note that the revised Framework requires well-designed, beautiful and safe places at paragraph 8b and Simon Cairns has demonstrated that this scheme does not comply with that requirement.

7.12 Further to this, the benefit of the housing cannot be afforded significant weight when the Council currently has an adequate deliverable supply.

7.13 Council has a robust 5YHLS as is common ground. The vast majority of sites have already commenced and there is no reason to believe they will not deliver within the next 5 years.

7.14 I note that past delivery can be assessed looking at any period of time to give the required results. The current adopted Core Strategy was based on targets set in 2001 and using that as the starting point the Council is seen to have overdelivered by 1100 units. The emerging section 2 Local Plan covers the period from 2017 and the target is 3680 (920 x 4) or 4012 (when using the higher target set by the standard methodology for 2 years). Delivery has been 4078 for that period despite there being a pandemic. The housing delivery test results along with previous appeal decisions have always concluded that there has not been a persistent undersupply.

7.15 The issue in this case is if the benefit of housing outweighs other considerations, including the poor quality of the design of the development. The delivery of affordable housing as a result of the development is also a benefit but that would be provided as part of a well-designed scheme in order to comply with adopted policy. Fundamentally, there appears to be no reason that a similar level of affordable housing cannot be provided in a scheme that is beautiful and exhibits good quality placemaking. To my mind this is not a case of 'either or'. The provision of affordable housing should not be seen as an alternative to good design. In my opinion the provision of a policy compliant level of affordable housing does not outweigh the need for good quality design. To suggest that it does would go against the recently amended NPPF with its strong emphasis on design.

7.16 The 30% affordable housing provision does no more than comply with required policy and as such I consider only limited weight is afforded to this benefit.

The Environmental Benefits of the scheme:

7.17 There is potential for Biodiversity Net Gain on this site. I accept there is also potential for some planting to be secured via condition but the Council has little detail at this stage as set out by Catherine Bailey's note that sits as an appendix to Simon Cairn's Proof. Both matters are standard expectations of the Section 2 Local Plan and therefore carry little weight in the planning balance.

7.18 I cannot reasonably see any other Environmental Benefits of this scheme. As set out by Simon Cairns, the proposed development would comprise a poorly designed scheme that does not take the opportunities available to it. It does not exhibit good placemaking and is not beautiful. It will not enhance the built environment in Tiptree. The matter of design was noted in the Social strand of sustainable development as set out by paragraph 8b of the Framework and is as equally relevant to the Environmental strand at paragraph 8c. This demonstrates how important design is to the acceptability of the scheme. It is therefore argued that this scheme fails to comply with the Environmental strand of sustainability.

7.19 Having considered the benefits of the appeal scheme, it is my opinion that there is significant conflict with the adopted Development Plan policies and the Framework when taken as a whole. The Planning Balance tips strongly in favour of a refusal.

7.20 There are no material considerations of sufficient weight or importance to indicate that the decision should be made other than in accordance with the development plan and the NPPF. The Council has balanced these negative aspects, against its benefits. In doing so, it is considered that the benefits of the proposal do not outweigh the unacceptable effects of the development and, as such, the proposal would not amount to sustainable development and there is no presumption in its favour under the terms of the Framework, taking into account its three dimensions as set out in Paragraph 8.

7.21 In accordance with the terms of the Framework, taking into account its three dimensions of environmental, social and economic considerations, I do not consider that the benefits that would flow from this development are of such a scale and significance that they demonstrably or otherwise outweigh the demonstrable harm that would result should the development proceed in breach of planning policy.

8.0 Summary and Conclusions

- 8.1 This proof has focused primarily on the lack of benefit to outweigh the harm identified when assessed against the adopted planning framework for the area. This reflects the plan led approach to decision making outlined in the revised NPPF.
- 8.2 The Framework states that development that is not well designed should be refused. That is clear and unambiguous.
- 8.3 The Council has determined that the planning application was not in accordance with the Development Plan, comprising of the Core Strategy, Site Allocations DPD, the Development Policies DPD, the adopted Section 1 Local Plan or the emerging Section 2 Local Plan. The most important development plan policies are up-to-date as set out above and significant weight attaches to the breaches of these (underlined by the Council's ability to demonstrate a 5-year housing land supply). Significant weight also attaches to breaches of emerging policy such as Policy DM15. Further, significant weight is afforded to the revised Framework. It also concluded that material considerations did not indicate that planning permission should nevertheless be granted, balancing the harmful effects of the development against the public benefits, in terms of the local economy and new housing, such as arise from the proposal.
- 8.4 The Council does not consider that the presumption in favour of sustainable development described in the National Planning Policy Framework (paragraph 11) can be properly applied to the proposal in that more specifically, it would not result in a high-quality scheme and is not beautiful.
- 8.5 The starting point for decision making is the Colchester Development Plan. It has been demonstrated that the proposal does not accord with the Development Plan. I have also considered other material considerations, but in this instance (even assuming NPPF paragraph 11(d) were to apply), the proposal's adverse effects demonstrably outweigh those benefits that might arise from it.

- 8.6 Set against benefits would be the harm the results from allowing a development that will not create a high-quality place. Much greater weight must be given to this conflict than the limited benefits of the scheme in light of the recent NPPF changes pursuant to design and beauty.
- 8.7 The Council considers the benefits of the scheme are insufficient either singly or in combination to outweigh the clearly identified harms. Accordingly, taking all relevant matters into account, the harms significantly and demonstrably outweigh the benefits of the appeal proposal. The planning balance is therefore weighted demonstrably against the appeal proposal.