

James Ryan

Rebuttal of Mr Firth's Planning Proof of Evidence

Appeal Ref: APP/A1530/W/21/3278575

LPA Ref: 190647

Introduction and Scope

1. This Rebuttal Proof responds to the Proof of Evidence of Mr Firth. It is set out in three sections. I shall firstly address the accordance with the Development Plan as a whole. I shall then consider Mr Firth's Planning Balance. I shall then provide an update on the Tiptree Neighbourhood Plan.

Part 1 – Accordance with the Development Plan as a whole

2. Mr Simon Cairns' Supplementary/Rebuttal Proof provide a tabulated response to Mr Firth's Appendices A and B which also reflects/summarises my own evidence concerning the most important policies and the nature and extent of compliance and breach of development plan policy more generally.
3. Mr Firth sets out what he considers to be the most important policies at Paragraphs 7.11 and 7.42 of his proof.

Adopted Plan

4. At 7.11 Mr Firth notes the following adopted Development Plan policies as being the most important:
 - *Policy SA TIP1 - Residential sites in Tiptree*
 - *Policy SA TIP2 - Transport in Tiptree*
 - *Development Policies DP5 – Appropriate Employment Uses and Protection of Employment Land and Existing Businesses*
 - *Policy SA H2 – Gypsy and Traveller Accommodation*
 - *Policy ENV1 – Environment*

5. I do not concur with this list. Whilst the policies referred to have some relevance, only one of them touches on the matter of design and that is ENV1. I deal with ENV1 in my proof in some detail.

SA TIP1 - Residential sites in Tiptree

6. Regarding SA TIP 1 Mr Firth says:

Notwithstanding the Council's position of housing land supply, it is clear that Policy SA TIP1 does not allocate sufficient sites to meet needs over the Section 1 Local Plan period. The current settlement boundary for Tiptree is in this respect out of date.

7. I would not expect the Site Allocations Policy Document from the Local Development Framework to allocate housing for the following plan period, and it is not out of date in that regard. In any event, that is of limited relevance to this appeal since it is clearly to be superseded by Section 2 Local Plan Policy SS14 (dealt with below). The policy does not, moreover, mention design. The Council's remaining putative Reason for Refusal (RR) concerns design and TIP1 has no place in the basket of most important policies in my opinion.

SA TIP2 - Transport in Tiptree

8. At 7.18 Mr Firth notes that SA TIP2 states the required transport upgrades are *"likely to include but not be limited to the Grange Road/Vine Road and Kelvedon Road junctions"*. *The highway network around Grange Road/Vine Road in particular has been subject to significant change and improvement in recent years. In this respect the policy has also been overtaken by events and is out of date.*
9. I agree with this, but it should come as no surprise that this is no longer relevant. In any event, the whole policy is not relevant to the first main issue in this appeal (it does not mention design other than to mention that walking and cycling will

be encouraged). The Council's remaining putative RR was a design one and SA TIP2 should not be in the basket of most important policies.

Development Policies DP5 – Appropriate Employment Uses and Protection of Employment Land and Existing Businesses

10. At 7.27 Mr Firth states: *The allocation of part of the site for employment purposes has therefore clearly been overtaken by events since its identification on the policies map. Policy DP5 is in this respect out of date.*

11. Policy DP5 is to be superseded by emerging Section 2 Local Plan policy SG4: Local Economic Areas. In any event, the whole policy is of marginal relevance to this appeal as the policy does not mention design. The remaining putative RR did not cite the loss of employment land and DP5 should not be in the basket of most important policies.

SA H2 – Gypsy and Traveller Accommodation

12. At 7.29 Mr Firth confirms that he *considers this policy remains up to date. The appeal proposal ensures there will be no net loss of gypsy and traveller provision through ensuring the currently residents can relocate to the nearby site at The Paddocks.*

13. I can agree with this, but I cannot accept that this is one of the most important policies for the determination of this appeal. Whilst it was used a part of one of the RR, the draft Section 106 agreement deals with this matter via a bespoke clause. The policy does not relate to matter of dispute in this appeal. It is not one of the most important policies.

Core Strategy Policy ENV1

14. At 7.32 Mr Firth considers CS ENV1 and notes how it references SA TIP1. He states:

However, as set out in relation to Policy SA TIP1 above, the current settlement boundary for Tiptree was last reviewed as part of the 2010 Site Allocations DPD. It does not reflect the latest housing targets within the Section 1 Local Plan or the acknowledged need for review of this settlement boundary. Thus the settlement boundary is acknowledged to be no longer fit for purpose insofar as it operates as a constraint on development recognised as being necessary. As such it is clearly out of date.

15. I do not agree with this assessment. This matter has been considered at Inquiry before. As set out in 5.20 to 5.24 of my Proof in relation to Policy ENV1 I stated that in line with the two most recent appeal decisions - those being Barbrook Lane and Maldon Road where the weight attaching to ENV 1 was dealt with in detail - ENV1 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 is not relied upon as a RR with regards to the appeal scheme.

Policies not Mentioned

16. I note that Core Strategy Policy UR2 and Development Policies Policy DP1, both key design and place making policies, are not noted in Mr Firth's 'most important policies at 7.9 to 7.61 I set these out in some detail in my Proof at 5.25 and 5.28 as they are key policies in the Council's remaining putative RR. These policies are very important, if not vital, to the assessment of the scheme against the Development Plan as a whole. Mr Firth's decision to avoid reference to these key policies and rely on the status of policies with far less relevance to the current appeal (and not noted in the Council's remaining putative RR) is flawed in my opinion.

Emerging Section 2 Local Plan

17. At 7.42 Mr Firth notes the following emerging Section 2 Policies that he considers to be most relevant. These are:

- Policy SS14: Tiptree
- Policy SG4: Local Economic Areas
- Policy DM11: Gypsies, Travellers, and Travelling Showpeople
- Policy ENV1: Environment

18. Once again, I do not concur with all of this list. Whilst the policies in question have some relevance, only one of them touches on the matter of design and that is ENV1. I deal with ENV1 in my proof in some detail.

SS14: Tiptree

19. I agree that SS14 is relevant and I have addressed that in detail in my proof. It is not however relied upon as any part of a reason for refusal of this scheme, and is not most important – since the appeal site's relationship with the settlement boundary should have no bearing on the determination of the current appeal.

20. At 7.51 Mr Firth states:

The Plan does not, however, grapple with the issue of defining an appropriate settlement boundary and relies on the Neighbourhood Planning process to define the new boundaries. This leaves the existing settlement boundaries in place and something of an anomaly in planning terms. The settlement boundary referred to in what could be a very recently adopted Local Plan would be out of date. The operative part of the policy: "Proposals for development outside of the settlement boundary, or settlement boundary defined by the Tiptree Neighbourhood Plan once adopted, will not be supported" This will necessarily mean that unless and until the new fit for purpose boundary is identified reliance

on the “old” boundary renders the policy instantly out of date and engages consideration of the application of the tilted balance.

21. I fundamentally disagree with this assertion. I do not see that this policy can be out of date prior to its adoption. The policy is clear in that it relies on a new Tiptree Neighbourhood Plan, and that is currently that Reg 14 stage. This is a forward-looking policy that allows the Neighbourhood Plan to allocate the sites the community considers appropriate. The wording acknowledges that the TNP is a future aspiration, which is actively being pursued. That is acceptable and it does not result in the tilted balance being engaged in my opinion.

22. Mr Firth’s assessment of SS14 and its juxtaposition with the TNP has potentially been formed as neither he nor I would have been aware of the progress of the draft TNP at the time of main proofs being drafted. Section 3 of this rebuttal proof deals with this in more detail, however in short, matters have now moved on in that regard.

23. Mr Firth notes at 7.54:

With regards to the principle of development, restraint of development in this area based on the settlement boundary in this area of Tiptree would be inconsistent with the focus of the plan and the settlement boundary and this part of Policy SS14 is out of date on this basis.

24. At 7.59 he then states:

To the extent that the policy relies on the settlement boundary for Tiptree, this is considered out of date due to the requirements of Policy SS14 as set out above in relation to that policy.

25. As noted above, I do not agree that the settlement boundary part of the policy is out of date and to suggest that it is unreasonable in my opinion. Notwithstanding this, the Council’s Statement of Case and its remaining putative RR did not raise an issue with the site in principle. My Proof of Evidence

clarifies this further. The Council do not consider that the scheme should be refused due to the failure to comply with SS14.

SG4: Local Economic Areas

26. At 7.55 Mr Firth notes that part of the site is allocated for employment uses and states:

The allocation of part of the site for employment however has been overtaken by the Council's now stated position on employment including the responses on the application from the Council's policy team. The allocation appears to have been carried forward without review despite the acknowledgement of the lack of need or suitability of the site. For this purpose the employment allocation at Tiptree is considered out of date.

27. This is not wholly correct. The response from the Council's Policy team that is noted above does not change the wording of the emerging Policy, it simply sets out the Policy Planner's thoughts on the scheme in terms of the planning balance. They chose not to be unduly obstructive, and that approach is positive and is reasonable. It certainly does not render the emerging policy out of date. Because of the positive approach taken by the Policy Team, SG4 was not relied upon in the Council's putative RRs. I do not see how it can be considered a most important policy for the determination of this appeal.

DM11: Gypsies, Travellers, and Travelling Showpeople

28. At 7.57 Mr Firth considers DM11 to be up to date. I concur, but I cannot accept that this is one of the most important policies for the determination of this appeal. Whilst it was used a part of one of the putative RRs, the draft Section 106 agreement deals with this matter via a bespoke clause. The policy does not relate to matters of dispute in this appeal. It is not one of the most important policies.

ENV1

29. With regards to ENV1, at 7.58 to 7.60 Mr Firth appears to look to afford weight to part of the policy and also simultaneously considers it out of date due to its relationship with SS14 with respect to settlement boundaries.

The proposed development is of course in accordance with the spatial strategy and preferred direction of growth identified within Policy SS14. Areas of the site are already previously developed or allocated for employment or gypsy and traveller accommodation purposes. I therefore consider this lessens the degree of conflict with Policy ENV1.

30. I consider this approach to be contradictory. I consider ENV1 should be afforded full weight due to its extremely recent nature and because it closely accords with the NPPF as set out in my proof of evidence.

Policies Not Mentioned

31. I note that SP7 of the adopted Section 1 Local Plan and DM15 of the Emerging Section 2 Local Plan are not mentioned in the main body of Mr Firth's Proof. Mr Firth has dealt with these policies in his Appendices and considered the level of conformity, but does not appear to consider them to be 'most important policies' with regard to the determination of this appeal.

32. Both SP7 and DM15 are key design and place-making policies and I have considered these in some detail in my main Proof as they are key policies in the Council's remaining putative RR. These policies are discussed in Mr Cairns' Proof and are very important to the assessment of the scheme against the Development Plan as a whole. Mr Firth's approach is flawed in my opinion. I consider this has serious knock-on effects for Mr Firth's planning balance assessment.

Mr Firths conclusions on the Tilted Balance

33. In his paragraphs 7.62 to 7.70 Mr Firth considers the Framework's paragraph 11d is triggered in this instance and the decision taker is therefore required to grant planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
34. I do not concur with this statement. This statement is flawed as Mr Firth has omitted the policies that are most important to this appeal as set out in the Council's putative Reason for Refusal. These policies, namely DP1 and UR2 of the adopted Local Plan, SP7 of the adopted Section 1 Local Plan and DM15 of emerging Section 2 Local Plan are clearly up to date and Mr Firth does not consider those in his assessment. There is no explanation for this approach, but it is surprising as the scheme is very clearly a design refusal.
35. In my opinion it is not possible to consider the scheme against the Development Plan as a whole if you do not consider the weight that should be afforded to the key policies and in this case they relate to design. Any other approach is flawed. The tilted balance cannot be engaged.

Part 2 – Planning Balance

Benefits

36. Mr Firth has set out the benefits of the scheme and weighed them against the adverse impacts. I will look at his assessment in the same order as they are set out in his proof in paragraph 8.208 and will provide my comments after each.

- *Provision of Affordable Housing (social benefit) – Very Substantial weight*

37. It is my opinion that whilst a benefit, it is not ‘very substantial’ in the planning balance as a well-designed scheme could, and clearly should, also deliver affordable housing as set out in my proof, in particular at 7.15. The provision of affordable housing and the quality of that housing (and the place that is created) are not mutually exclusive or competing considerations. This scheme is poor in design terms and does not successfully create a beautiful place as is required by the NPPF (Mr Cairns explains). In my opinion, the argument fails. It appears that Mr Firth considers the provision of affordable houses to negate or tend to negate the need for them to be well-designed and sit within a beautiful place. I disagree with this, and it is my opinion that the additional requirement for beauty in the 2021 update to the NPPF applies to all development.

- *Provision of 130 homes (social benefit) – Very Substantial weight.*

38. It is my opinion that whilst a benefit, it is not ‘very substantial’ as a well-designed scheme could, and clearly should, also deliver market housing as set out in my proof, in particular at 7.15. The provision of housing and the quality of that housing (and the place that is created) are not mutually exclusive or competing considerations. This scheme is poor in design terms and does not successfully create a beautiful place as is required by the NPPF. In my opinion, the argument fails. As with affordable housing, it appears that Mr Firth considers the provision of housing to be so beneficial one can negate to at least some degree the need

for them to be well designed. I disagree with this, and it is my opinion that the additional requirement for beauty in the 2021 update to the NPPF applies to all development. As with the affordable housing this is not a case of 'either or'. These are not competing elements.

- *Biodiversity Net Gain (environmental benefit) – Significant weight*

39. As I set out in my proof at 7.17, there is potential for Biodiversity Net Gain (BNG) but that cannot be given more than limited weight in my opinion, as it simply enables the scheme to comply with the Section 2 Local Plan. At 8.44 Mr Firth states:

It is concluded that the development can potentially deliver an overall gain of 20.34% for habitat units and a 24.93% gain for hedgerows/linear features.

40. I do not consider this to carry significant weight. As set out in Appendix 2 of Mr Cairns' Supplementary/Rebuttal Proof, it is not clear that the quoted figure is realistic. I expect that a well-designed scheme of the type described by Mr Cairns would deliver significantly greater BNG dividends. That is because a well-designed scheme would have more open space available, more planting opportunities and more tree planting opportunities too.

- *Contribution to the economy (economic benefit) – Significant weight*

41. I do not concur with this weighting. As I set out in my proof, the economic benefit is relatively limited. The economy of Colchester is buoyant as per the last AMR. None of the point raised in Mr Firth's Proof from 8.91 to 8.100 are unique to this scheme and none would significantly diminish if the housing numbers were reduced or the land in the centre of the site was brought into the scheme and thus creating more space to provide a high-quality layout.

- *Sustainable Location consistent with settlement hierarchy (social and environmental benefit) - Moderate weight*

42. In Paragraphs 8.16 to 8.38 Mr Firth sets out how the scheme is acceptable in principle in this location. I read this as not so much of a benefit of the scheme, but rather a policy justification for the development in this location.

43. If the site was not sustainably located, the Council's putative RRs would have noted that. That is not the case, and this is not a matter of argument. This is no more a benefit than any other scheme on the edge of a settlement. It is still rather peripheral in terms of location. There are many sites in the Borough that are more sustainably located, for example brownfield sites in village centres. I consider this to add less-than-moderate weight.

- *Optimisation and efficient use of land (social and environmental benefit) – Moderate weight*

44. The development at this density is dealt with by Mr Cairns in some detail. At paragraph 8.51 Mr Firth states that:

The Framework at paragraph 130 that decision should ensure developments optimise the potential of the site. At paragraph 125 the framework also specifically requires that "Where there is an existing or anticipated shortage of land for meeting identified housing needs, it is especially important that planning policies 37 and decisions avoid homes being built at low densities, and ensure that developments make optimal use of the potential of each site". Paragraph 125(c) also specifically requires that local planning authorities should refuse applications which they consider fail to make efficient use of land.

45. The Council is not averse to the efficient use of land at all. At no point has the Council stated it would prefer lower densities for the sake of it. As I see it, this really is a matter of context, place-making and beauty; and none of these are shown to be respected or achieved at the density proposed.

46. The scheme has been through a number of iterations, and none have been considered to comprise good design. I consider it reasonable to argue that a lower density scheme is one solution to overcome the lack of placemaking. Alternatively, with successfully land assembly, the site that sits in the middle of the scheme but is not included in the site ('The Gables') could, either in full or in part, be brought into the scheme that would not only free up land area but the significant constraint that site puts on the layout.

47. The use of land in an efficient manner is a benefit but I do not consider that it comes, in accordance with the NPPF, at the cost of place-making and beauty. I consider the benefit to carry less than significant weight.

- *Tree canopy (environmental benefit) – Moderate weight*

48. As I set out in my proof at 7.17, there is potential for additional tree planting but that cannot be given more than limited weight in my opinion, as it simply enables the scheme to comply with the Section 2 Local Plan. At 8.66 Mr Firth states:
The Canopy Cover Assessment (CD13.8) sets out there will be a 10% increase in canopy cover at year one, a circa 50% increase in canopy cover by year ten, and a circa 85% increase in canopy cover by year twenty.

49. I do not consider this to carry moderate weight. I consider it to carry less than moderate weight. As set out in Appendix 2 to Simon Cairns' Supplementary/Rebuttal it is not clear that the quoted figure is realistic. Further, I would expect a well-designed scheme of the type described by Mr Cairns would deliver significantly greater Canopy Cover dividends. That is because a well-designed scheme would have more space for tree planting and potentially would require less trees to be removed in the first place.

50. In any case, I do not consider the level of potential increase in Canopy Cover to outweigh the poor design demonstrated by this application.

- *Connectivity improvements (social benefit) – Moderate weight*

51. Mr Firth sets out the following at 8.83 and 8.84:

The scheme layout has been designed to incorporate routes for walking and cycling with it, including shared spaces where appropriate and a walking and cycling link to Kelvedon Road. Dropped kerb crossing points are proposed in a number of locations to further improve connectivity. The upgrade of the footway outside the site is also proposed. The proposed highway works also include provision for new dropped kerbs, as set out in the draft S106 and CD13.45, and bus stop signage at the existing unmarked stops at Kelvedon Road could be improved through condition. These are located within close proximity to the application site.

52. I do not consider any of these items to be of moderate weight in the planning balance. They are simply required to facilitate the development and to mitigate its impacts. Dropped kerbs and footway upgrades are relatively minor interventions that simply exist to allow residents of the appeal site connectivity. They will be of limited use to existing residents. I accept the new footway may be of use to other residents travelling to the industrial estate on foot, but give that limited weight as a well-designed scheme would need to deliver the same highway works. Dropped kerbs and new footways are not compensation for a poorly designed scheme that is not beautiful and does not exhibit placemaking.

- *Bespoke Design (social, environmental and economic benefit) – Limited weight*

53. At 8.179 Mr Firth says:

A particular part of the design approach in this case has been the bespoke nature of the design of scheme. The applicant Marden Homes are a SME housebuilder and this has enabled a design approach that is bespoke to the circumstances. There has been no applicant requirement for the use of standard house types and the architects have therefore been provided with the opportunity for an entirely bespoke approach to the scheme. This is of particular

benefit and ensures the scheme can better respond to the site context and a design approach appropriate for the site. I therefore give this limited positive weight in the planning balance.

54. As set out by Mr Cairns, the design is poor, the scheme lacks placemaking and the overall package is not beautiful. The use of 'Bespoke' appears to relate to the lack of a 'standard housebuilder' house type. Regardless of this, the scheme is held to be unacceptable in design terms. I do not consider the design to be a benefit of the scheme at all. This criterion should be a significant adverse impact, not a benefit.

- *Safeguarding route for a road link / wider connectivity (social, environmental and economic benefit) – Limited weight*

55. The application layout was informed by the previous Tiptree Neighbourhood Plan. As with my Proof, drafting took place prior to the publication of the new Draft Tiptree Neighbourhood Plan. It has now been published (see Section 3 of this rebuttal).

56. The new draft TNP does not show a road proposed across this site, nor does it allocate it for development at all, nor does it allocated the land beyond that this road looks to serve.

57. The safeguarding of a link road that there is now no community aspiration to deliver is not a benefit. Its inclusion has, however, led to an unfortunate layout where the main vista as one passes along the road will be the boundary treatment at the end of a truncated spine road. There is no visual end stop. There is nothing to view except potentially some planting.

58. Whilst the Council does not usually wish to see site layouts that prevent further sites coming forward, any future potential links should be discreet. In this

instance the future link is far from discreet and that is poor in urban design terms. The provision of the future link could be argued to be of limited benefit, but the harm in urban design terms of its provision is a moderate to strong adverse impact in my opinion.

- *Off-site environmental mitigation / Recreational Avoidance Mitigation Strategy (environmental benefit) – Limited weight*

59. This is simply a legal requirement to comply with the Habitat Regulations, the Essex Coast RAMS SPD and the Adopted Section One Local Plan. This is in part provided in lieu of on-site SANGs as there is not space for them on the site. I find this to be neutral in the planning balance.

Adverse impacts

- *Conflict with parts of the Development Plan (social, environmental and economic)– Moderate weight*

60. I do not consider the conflict to be moderate. I consider the weighting to be considerable, due to the conflict with the design policies described by Mr Cairns. These are the policies than I consider most important for the determination of the appeal as set out in my proof.

- *Harm to the landscape as a result of the development (environmental) – Moderate weight*

61. I agree with this weighting.

- *Impacts on the highway network (social, environmental and economic) – Moderate weight*

62. I agree with this weighting.

- *Impacts on local infrastructure (social, environmental and economic) – Moderate weight*

63. I agree with this weighting.

- *Conflict with the existing employment allocation (economic) – Limited weight*

64. I agree with this weighting

- *Conflict with existing gypsy and traveller allocation (social and environmental) – Limited weight*

65. I agree with this weighting.

- *Impact on the emerging Neighbourhood Plan (social, environmental and economic) – Limited weight*

66. I agree with this weighting.

Mr Firth's Appendix A and B

67. I rely on Mr Cairn's Appendix 1 for the compliance with a significant number of Local Plan policies. The majority of the policies for which the Council do not concur with Mr Firth's position are design based and he deals with them in detail. It is for this reason that the responses to them sits in that rebuttal.

My conclusion on Mr Firth's Planning Balance Exercise

68. In terms of the benefits that Mr Firth has set out, it is my opinion that it is assessed as if the Council has resisted the scheme in principle, which is not

the case. There does not appear to be any acknowledgment that the main issue between parties is the design/layout/placemaking/landscape/beauty and many of the 'benefits' he has listed would be more beneficially provided by means of a well-designed scheme.

Part 3 – Tiptree Neighbourhood Plan Update

69. In my proof I stated that although a new Tiptree Neighbourhood Plan was potentially imminent, I had not seen a draft. I can now confirm that the Draft Tiptree Neighbourhood Plan was published for Regulation 14 consultation on the 11th March and will conclude on Sunday 1st May 2022.
70. The spatial strategy of the Draft Tiptree Neighbourhood Plan now takes into account the 200 dwellings granted on appeal at Barbrook Lane. As a result the Plan is now making allocations for a minimum 400 dwellings (in accordance with Emerging Local Plan Policy SS14 as proposed to be modified). Given the reduction in new allocations, I note that the appeal site is no longer being pursued as a site allocation. This is a fundamental change from the previous Tiptree Neighbourhood Plan.
71. The Draft Tiptree Neighbourhood Plan presents a strategy in accordance with the Emerging Section 2 Local Plan, however that strategy remains to be subject to consultation and examination. In terms of weighting, I do not consider any weight can be afforded to the draft Tiptree Neighbourhood Plan at Regulation 14 stage. It is likely that representations will be made to the draft Tiptree Neighbourhood Plan that have the potential to change the plan once they are fully considered.
72. The Council's remaining putative RR does not relate to matters of principle. In my opinion the fact that the site does not appear in the new draft Neighbourhood Plan does not change this stance at this stage due to level of weight that the draft Neighbourhood Plan can be afforded.