

Supplemental/Rebuttal Proof of Evidence

Simon Cairns

Colchester Borough Council

Appeal against non-determination of a full planning application for the erection of 130 residential dwellings with access, link road to allow for potential future connections, associated parking, private amenity space and public open space.

At: Land adjoining The Gables, Kelvedon Road, Tiptree, Colchester.

LPA Application Ref:190647

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

March 2022

Supplemental/Rebuttal Evidence of Simon Cairns

Part	Title
1.0	Scope and purpose
2.0	Revisions received following drafting of evidence
3.0	Ownership & application site assembly flaws
4.0	Contextual responsiveness
5.0	Conflict with key development plan policies and national guidance

Appendices

- 1) Compliance Schedule: Comments on Mr Firth's Appendix A & B**
- 2) Catherine Bailey: Canopy Cover and Biodiversity Net Gain (BNG) Assessments**

1.0 Scope and purpose

1.1 I have considered the revisions submitted on behalf of the appellants after the appeal was lodged against non-determination. These sought to address the shortcomings of the scheme as set out in the Council's Statement of Case and the putative reasons for refusal. As I will explain in Section 2 below, these revisions acknowledge some of the design weaknesses in the appeal scheme and seek to correct these failings. They do not, on the other hand, provide a comprehensive remedy to the endemic flaws sufficient to address the conflicts identified with key development plan policies and national guidance.

1.2 I have carefully considered the evidence of David Plant (DP) and James Firth (JF) submitted on behalf of the appellants and my response or rebuttal in respect of the following matters is also set out below:

- firstly, relating to the land assembly of the appeal site;
- secondly, matters concerning the contextual responsiveness of the appeal proposals; and
- thirdly, matters of compliance with relevant development plan policies and Canopy Cover/BNG Assessment (Appendices 1 and 2). The first of these has been presented, for ease of comparison with JF's appendices, as two comprehensive tables including Mr James Ryan (JR)'s responses in respect of policies that do not fall within the scope of my own evidence. DP's evidence does not provide coverage on planning policy matters.

2.0

Revisions submitted to appeal proposals on 25 February 2022

2.1 The appellant submitted a raft of revisions to the appeal scheme under cover dated 25.02.22 (JF Savills). The appellants summarised these changes (Laura Dudley Smith 28.02.22) as comprising (numbered for ease of reference):

- (i) Composition of open space amended to show slightly deeper basin and play area kept outside of it at road level to ensure access for all users
- (ii) Insertion of wildlife pond to meet BNG requirements – this saw relocation of Block A cycle/refuse storage to southern end of building rather than to the north of the car parking area and thus the Block A Elevations/Plans have been updated accordingly
- (iii) HTs 3.2, 3.8, 3.9, 3.10, 3.12, Flat Block C – there hasn't been any change to these house types, the compliance plans have simply been provided to demonstrate their compliance with M4(2)/(3)
- (iv) HT4.11 WC enlarged and relocated for plots allocated as Affordable to ensure M4(2) compliant
- (v) Garages moved forward along main spine road and verge/footpath layout confirmed to ensure parking spaces less than 1m from edge of highway even if road widening is required in the future.
- (vi) Minor adjustments to various other car port formats/garage/parking space positions to ensure no more than 1m from highway edge as required by ECC
- (vii) Removal of radius kerbs along driveways along main access road
- (viii) Size three turning head confirmed towards western end of main access road
- (ix) Pedestrian/cycle access widened to 3.5m
- (x) Shared surface transition outside Plot 99
- (xi) 2m footway shown along Kelvedon Road shown on plans

2.2 Addressing these revisions in the same order I wish to make the following observations:

- i) The changes to the composition of the single area of public open space are welcomed as they seek to address the fundamental conflict in the competing use/users requirements for this relatively small area. Further details were submitted on the 21.03.22 comprising an Open Space Plan (ref:396.00 Dated 16.03.22 Proposed Public Open Space Layout Plan - CD13.50). Indicative SUDS detention basin and LEAP read in conjunction with the retained trees and vestigial hedgerow illustrate that within the total POS area of 0.45361 Ha this comprises a tree belt of 0.14048 Ha and a LEAP of 0.03959 Ha.

The policy requirement in both the adopted Local Plan (Development Policy DP16) and eLP (Policy DM18) (CDs 8.2 & 9.1) is for a dedicated area of at least 10% of the gross site area to be provided as POS. The appeal site area is 5.16 Ha setting a policy compliant requirement for 0.516 Ha for POS. The appeal site allocation is materially deficient in this regard.

Furthermore, whilst it is not inappropriate to include the tree belt, SuDS and LEAP in the POS calculation these are all uses that limit recreation, particularly for certain groups, and the POS effectively has no area dedicated exclusively to quiet recreation or informal play. Thus, whilst the LEAP is for 4-8 years old approximately, this effectively excludes older children, adults, the elderly (and dog-walkers!).

The tree belt is good for visual amenity and biodiversity, and might provide some play for older children but excludes most quiet recreation uses.

The SuDS are inevitably only usable for active recreation during some of the year (assuming this is not a permanent water body). However due to its sloping sides this will place limitations on use by the disabled, elderly and some parents with children in buggies depending on degree of slope. Such areas can also be of arguable amenity and visual value as they can retain the utilitarian character of their primary function.

In my opinion it is important to note that the Gross Area of POS 0.45 ha is almost wholly made up of space targeted at other uses so there is no dedicated informal quiet recreation area, as well as restricted space for active recreation for older children e.g., informal kickabout, at times of rainfall, high water table etc.

In my opinion, an appropriately sized dedicated recreation space should form the core of the POS and not be something that fits round all the other functionalities of the so-called POS - which is both deficient in area and conflicted by the competing demands placed upon it. I do not agree that the POS makes 'Provision of a large, accessible POS within the site providing a community outdoor space' (DP para 4.1, Page 22).

(ii) Insertion of Wildlife Pond in lieu of BNG: CD13.7 Area shown as P on Liz Lake Landscape Masterplan.

The BNG claimed is in fact at best regarded as mitigation for the loss of the existing pond which would be sacrificed to the development. The established pond habitat would be lost and a new pond (of unspecified form and dimensions created in close proximity to Flat Block A. The pond would be overshadowed by existing trees to the north and west and would suffer from leaf litter and overshadowing from the flats and

trees, as well as likely pressure from the flat's occupants and their pets. I do not believe this should be regarded as BNG.

(iii) & (iv) Plans to demonstrate compliance with M4 Cat 2 compliance. This is the current building control/policy standard for affordable homes and I have no further comment.

(v), (vi) & (vii) Revisions to achieve satisfactory relationship of parking with highway. No comment.

(viii) Removal of Radiused Kerbs from driveways: No comment

(ix) Insertion of Type 3 Turning Head at SW end (south side) of main spine road. This is welcomed as it was omitted from the scheme as appealed. The turning facility projects into the retained vestige of the hedgerow (southern end only as northern end is built over, see CD 13.36 & CD13.7). As it may be concealed from view, vehicles may only discover that the road terminates at the site boundary necessitating reversing back up the street to use the turning head. I believe this head is likely to become used as a parking facility for the homes opposite or as a convenient parking bay for residents or visitors to Flat Block A.

(x)-(xi) No comment.

(xii) Footway across site frontage increased to 2.0 m in width (see CD 13.44 & 13.45). I welcome this increased depth but note that even with a crossing to the south of the site (notional Zebra) the footway linking the site to the remainder of the village heart to the south is served by a footway of restricted width overhung by outgrown hedgerow which materially limits its usability for pedestrians. The discontinuity in footway depth and restricted width across the frontage of The Gables negates the effectiveness of this approach in my view. The apparent intention that pedestrians may cross to use the proposed enhanced footway created at the junction with Oak Road, is unrealistic and would not provide a practical option for pedestrians. Beyond this general point I defer to ECC Highways and the opinion of Martin Mason.

I have no further comment on the set of revisions submitted in late February. I do wish to highlight that the Open Space Plan (dated 16.03.22) submitted 18.03.22 (CD13.50) usefully illustrates the inadequate provision of areas of public open space. The landscaped areas across the road frontage of Flat Block C and plots 35-36 should not be regarded as usable areas of open space. In the case of Flat Block C, this is the only shared outside space (apart from a small area to the south of the parking court which is marginally located and inconvenient for most resident users. I do not believe it reasonable to suggest that there will be any public usage of the lawned frontage area to plots 35-36 as it is a peripherally located on the northern edge and heavily overlooked by passing vehicles. Both of these spaces on the site frontage are contributors to visual amenities only.

Of those sections of my main proof of evidence concerning the ten characteristics of well-designed places, the changes my conclusions remain unchanged by these minor revisions to the scheme as appealed.

3.0 Ownership & application site assembly flaws

- 3.1 I note and agree in part with DP's evidence concerning the design challenges arising directly from the exclusion of the property known as The Gables from the appeal site (Executive summary 'Inter relationship with the Gables and wider landscape' and DP's proof para. 7.2 address this point). I note that the reality of this key constraint and design challenge is acknowledged insofar as "Whilst it is acknowledged that it would have been beneficial for the dwelling and land referred to as The Gables to form part of the application site the landowner did not wish their site to be redeveloped or included in any planning application." I agree with this conclusion. In my view the predicament that this situation created did mitigate against the creation of a successful scheme as it necessitated a series of multiple cul de sacs within the developable land area of insufficient extent to permit the creation of contextually appropriate densities within a landscaped hierarchy of spaces and neighbourhoods of sufficient richness and distinctiveness to deliver successful place making.
- 3.2 I believe that this fact fundamentally restricted the design options available to the appellants as the finger of land to the south of The Gables is essentially poorly integrated with the main body of the appeal site. The site form coupled with a desire to achieve a high number of units have led to key design decisions. These include the provision of minimal public open space, the use of contextually inappropriate large scaled flatted blocks of 3 storeys and continuous frontage development in this peripheral location on the edge of the village.
- 3.3 A perimeter block form occupies the heart of the site defined by almost continuous frontage development, the potentially through road suburban avenue-inspired thoroughfare across the western flank of the site and an enclave of executive housing set around a private driveway to the south of The Gables. The desire to deliver a high number of units coupled with the morphology of the site left little scope for meaningful open space or a hierarchy of landscaped spaces. As the site area was dictated by ownership, only a flexible approach to unit numbers could potentially have allowed the creation of a more contextually responsive scheme. However, the appeal site coupled with a dogged commitment to unit numbers necessitated the design approach now evident with continuous frontages and three

storey flatted blocks assertively guarding key street corners and junctions.

- 3.4 Whilst I concede that it could nevertheless have been possible to deliver a 'well designed scheme that responds to its context' within the appeal site area this was contingent on a flexible approach to unit numbers. It is this combination that has dictated the approach adopted in this appeal proposal. A significantly less dense scheme could have delivered a soft, open grained scheme where landscape permeates and dominates subordinate built form in a controlled empathetic transition to the countryside beyond. This simply cannot be achieved within the appeal site area.

4.0 Contextual responsiveness

- 4.1 In response to DP para 3.11, the appeal proposals seek to impose a new design and place narrative that ignores the wider settlement context of a rural edge and the local distinctiveness of Tiptree. Instead, the appeal resorts to generic village street and suburban typologies that do not make any concession to Tiptree or the site context as a unique place. In terms of context, the local traditions of low density housing arising from settled travelers' pitches found along Kelvedon Road are described in pejorative terms and the approaches adopted elsewhere by volume house builders in Tiptree are seen in preference to genuine local distinctiveness. In effect, a conscious commercially driven agenda is reflected in a new vernacular aesthetic rooted in a ubiquitous suburban housing tradition (DP3.13-3.14) an "appropriate architectural vernacular" is thus imposed.
- 4.2 Kelvedon Road at this point bleeds into the countryside as a series of plot land developments. Here modest dwellings (usually bungalows) are set in rectilinear plots towards the street frontage. These are frequently associated with equine yards and other outhouses to the rear interspersed by formal and informal commercial development. This established open grain conflicts with the stated design intention "to create a strong continuous built frontage" (DP Executive Summary) whilst DP suggests that a guiding principle was to retain the street frontage to Kelvedon Road (DP para.4.1). This seems to conflict with DP para 8.3 which concludes "principally it will infill the variable and irregular gaps between the existing built form." In reality, with the exception of The Gables, all of the existing development would be replaced by new frontage development of markedly different

character, comprising three storey continuous frontage development and detached executive styled villas.

- 4.3 There is an acknowledgement of the appeal site's location on the settlement edge and the need for a "sensitive transition" (DP para.5.5) between the village and countryside. However, the site abuts almost exclusively detached homes with isolated examples of semi-detached units. There are no examples in the vicinity of continuous three storey frontage development and little historic precedent for such village street typologies in wider Tiptree other than in recent housing schemes by volume house builders which predate the most recent Government guidance in recent iterations of the NPPF.
- 4.4 The Gables is a higher status and more substantial dwelling which looks back to the Victorian period as opposed to the plot lands of the mid Twentieth Century. This northern stretch of Kelvedon Road displays a modest built character with mainly detached bungalows interspersed by some conventional semi-detached dwelling types e.g., Coronation Cottages with industrial manufacturing (mainly well-known joinery firms) on the Tower Estate.
- 4.5 Tiptree is not defined by a wealth of surviving vernacular detail such a pentice boards, timber frames and clay tiled roofing as found in many areas of the Borough and the adoption of this vocabulary is alien and contextually inappropriate. The designs adopted in any event do not actually reflect the key elements of Essex vernacular as explained by DP (para.3.15 for examples of rural building forms, and para.7.5 for some detailing) instead even cursory examination of the Streetscenes (Drawings 361.01, 362.01 and 363 at CD13.26-13.280) reveals the adoption of an ersatz pastiche, highly derivative and only shallowly grounded in the local vernacular.
- 4.6 It is difficult to reconcile the form of the flatted blocks with the appeal site context nor indeed the design ethos ostensibly based on the Essex vernacular where three storey development is exclusively found in major urban centres and not villages, let alone village edge locations. DP para 5.4 explains that in the case of Blocks B and C these have the appearance of a series of attached dwellings. In my view a key word is omitted but implicit to this statement, is namely town houses and this highlights the contextually inappropriate nature of these town centre forms. DP is silent on the aesthetics of Block A (drawing 351.01, see CD.6b.56 & 6b.57). This has a conventional appearance of a later C20 suburban flatted scheme of three

storeys and cannot reasonably be held to have a domestic scale or form. This is despite the location of the block on the edge of the site abutting open countryside. DP acknowledges it has a relatively isolated location (para.7.20) but that it will provide “occupants with views across the open space to the east and the countryside to the West. It also acts as a landmark”. This would appear alien and incongruous in my judgement with unbroken views obtained from the PROW to the south and west.

- 4.7 Section 5 of DP’s proof seeks to explain how the shortcomings identified in the previous iterations of the scheme were addressed and resolved. The narrative has a principal focus on architectural matters. However, DP para.5.8-5.13 sets out the approach taken to layout and implicitly context. The evidence presented does not satisfy my concerns about lack of connectivity to the adjacent PROW network. DP para 5.11 acknowledges that the primary road terminates at the SW boundary. But that this will be left open to provide access to the adjacent PROW on private land to the SW. There is no evidence of any agreement with the adjacent landowner to create a new access to their land in order to access the footpath. Indeed, the recent Landscape Masterplan (CD 13.7) shows a new native buffer mix across the end of the street. This would create a hedged termination visually and functionally preventing any such access in practice.
- 4.8 DP Para 5.13 suggests that the layout has been split into three character areas. I concur with this view generally with a long principal street to the north, a village centre to the south of the single area of POS and a cul de sac of detached executive homes aligned to the south of The Gables. The village typology has a strong sense of enclosure more frequently found in small market towns in north Essex with broadly continuous frontage development. At the southern end the two streets are linked by a footpath only that has no onward connectivity with the residential scheme to the south. DP paras. 7.4 and 7.9 suggests that a visual connection will correct this defect as the two schemes will read as a unified whole. I do not accept that this suggested visual deceit will fool anyone. The Landscape Masterplan (CD.13.7) shows native scrub and native buffer mix planting. In effect, an informal hedgerow will develop and reinforce the sense of visual and functional separation. Whilst to the north of the main street, two driveways break northwards and terminate at the site boundary marked by retained hedgerow, native scrub planting and augmented by acoustic fence (DP para.7.4)

- 4.9 DP Para.5.13 states that the character areas relate to the ecological parameters of the site. This is not apparent to me from the layout whose only concession to ecology is the partial retention of the hedgerow within the small area of POS (less than the requisite 10%) whilst the existing pond is removed. I note that a new pond is now shown within the curtilage of flat block A. Given the statutory requirement for a minimum 10% Biodiversity Net Gain and the adopted and emerging local plan policy requirements, I am surprised that much greater emphasis is not given to this matter beyond the sketchy coverage at DP para 7.3. I cannot identify “ponds to be enhanced” but only lost to the scheme. I defer to the evidence of Catherine Bailey in these matters at Appendix 4 to my main proof of evidence and the further notes appended to this rebuttal evidence.
- 4.10 In conclusion, I reiterate that the development has a weak response to context, poor connectivity to the wider PROW network and would fail to create a soft edge to the countryside and to respect the peripheral location of the appeal site relative to the wider settlement of Tiptree. Instead employing built forms and scaled development appropriate to the settlement heart and not its rural edge. I fundamentally disagree with the conclusions drawn in DP’s Section 8 and particularly that “the application of scale, height and massing is appropriate to its context..” for the reasons I have identified in my evidence.

5.0 Conflict with key development plan policies and national guidance

- 5.1 I have addressed the compliance of the appeal proposals with key development plan policies in my main proof of evidence insofar as the detailed form and design of the proposals is in conformity or conflict with the important placemaking and design policies in the Development Plan and relevant Section 2 advanced emerging Local Plan. DP does not seek to relate his conclusions to the Development Plan but instead these matters are dealt with in the evidence of JF.
- 5.2 I have relied on JR’s assessment of JF’s evidence for consideration of which are the most important development plan policies, matters of planning balance and compliance with the Development Plan as a whole.
- 5.3 I have set out below as Appendix 1 schedules to correspond, for ease of reference, to JF’s Appendix A and B. These set out my

responses to JF’s evidence concerning design-related matters. They also include, for convenience, JR’s responses in respect of policies that do not fall within the scope of my own evidence, including whether these are most important and whether or the extent to which the proposal is in compliance or breach. DP’s evidence does not provide coverage on planning policy matters.

APPENDIX 1: Responses to JF PoE Appendices A & B

Appendix A – Adopted Plan

Policy	Response to Mr Firth’s ‘Degree of Conformity’ column
Core Strategy	
SD1	SC: ‘High conformity’ not agreed due to design deficiencies identified in my evidence. In part SD1 is superseded by Section One CLP Policy SP1 The development does not achieve a high standard of design and sustainability as demonstrated through assessment of the adopted policies below such as UR2, ENV1, ER1, DP1 and SP7.
SD3	Agreed.
CE1	Agree some conflict with the allocation of part of the site for Employment however the policy refers only to protection of employment through the Borough rather than allocated employment land.
CE3	Agree some conflict with the allocation of part of the site for Employment however the majority of the policy is not relevant in respect that it simply refers to allocation of Local Employment Zones as opposed to their protection or their development for other uses.
H1	Agreed. Although it is recognized that parts of H1 are superseded by Section One CLP SP3 and SP4 and the eCLP Section 2
H2	SC: Density – Conformity not agreed as scheme fails insofar as “The density of developments also needs to be informed by the provision of open space and parking, the character of the area, and the mix of housing”. The appeal proposals are unresponsive to the character of the area and make inadequate provision for public open space.
H3	Agreed.
H4	Agreed.
H5	Agreed.

UR2	SC: Disagreed. The appeal proposal conflicts with this key policy. Areas of conflict and significant design issues raised at SC main proof para.7.4
PR1	SC: I do not agree there is high conformity as the public open space is inadequate in size and located entirely within SuDS basin (Evans report Drwg of Detention Basin Ref:2229/RE/010). See my para.2.2 i) above
PR2	Agreed.
TA1	SC: Do not agree there is high conformity. The scheme does not maximise connectivity with the PROW network or prioritise sustainable transport modes. The improvement of Bus Stops is mitigation only. Para 6.8, 6.18 SC PoE
TA2	SC: I do not agree that there is 'high conformity'. A new footway is a useful addition, but it does not make the development 'highly sustainable'. The walking and cycling connections are not excellent but deficient in my opinion see para.6.8,6.18 SC PoE
TA3	Agreed
TA4	SC: The appeal does not give priority to sustainable transport and only conforms in part.
TA5	Agreed
ENV1	<p>SC: Agreed conflict. I do not agree that there is high level of conformity to environmental strands of policy, namely:</p> <p><i>Be appropriate in terms of its scale, siting, and design;</i> <i>And,</i> <i>Protect, conserve or enhance landscape and townscape character, including maintaining settlement separation.</i></p> <p>These are fundamental design matters, and the scheme does not comply with them as set out in detail in my main and supplemental proof.</p>
ER1	SC: I do not agree that there is good conformity. Conformity is limited. The low energy appliances noted cannot reasonably be conditioned.
Development Polices	
DP1	<p>SC: Not agreed. Significant design conflict as set out in my main proof</p> <p>The appeal proposals do not specifically:</p> <ul style="list-style-type: none"> (i) Respect and enhance the character of the site, its context and surroundings in terms of its architectural approach, height, scale, form, massing, density...townscape or landscape setting (v) Respect and enhance the landscape and other assets that contribute positively to the site and the surrounding area; and

	(vii) Take account of landform, layout, building orientation, massing and landscaping to minimize energy consumption. SC PoE para.7.4 refers.
DP2	Agreed.
DP3	Agreed.
DP5	SC: As set out by Mr Ryan in his rebuttal proof, it is not agreed this is a 'most important' policy. Some conflict agreed. But the scheme could have included an element of mixed use or live-work units. Refer to SC PoE Para.6.25.
DP12	SC: Do not agree high conformity insofar as the development does not achieve a high standard of design.
DP15	Agreed not relevant.
DP16	SC: Do not agree high conformity. Open space conflict as it is not agreed that 10% of the site is 'usable' open space. SC Supplemental PoE para 2.2 i)
DP17	Agreed
DP19	Agreed
DP20	SC: Do not agree high conformity as the SuDS scheme is not the optimum solution as it sits within the open space and will not therefore have the biodiversity dividend a truly biodiverse ponds/attenuation basin/reed bed etc. would provide. It is a detention basin and dry except during or after flood events and discharges to Anglian Water sewer. Refer to drwg.2229/RE/01 Evans Report. It comprises a depression of 1.0 m depth with sides graded to 1 in 3. A swale would have been a more optimal solution from a biodiversity perspective. Whilst the incorporation of the basin into the area of POS may be acceptable in principle, the gradient of the sides prevents access to this area by wheelchair users contrary to the provisions of the Equality Act 2010.
DP21	SC: Do not agree high conformity. I refer to the Note of Catherine Bailey on this point and the deficiencies identified.
Site Allocations	
SATIP1	As set out by Mr Ryan in his rebuttal proof, it is not agreed this is a 'most important' policy. Agree no conflict.
SATIP2	As set out by Mr Ryan in his rebuttal proof, it is not agreed this is a 'most important' policy. Agree not relevant.
SAH2	As set out by Mr Ryan in his rebuttal proof, it is not agreed this is a 'most important' policy. Agree no conflict.
Section 1 Local Plan	
SP1	SC: Strongly do not agree high conformity as design is clearly a key factor in the assessment of sustainable development as set out in the NPPF which SP1 quotes directly. The appeal scheme fails to achieve compliance with key Development Plan policies

	and relevant national guidance and does not represent sustainable development for these reasons.
SP2	Agreed
SP3	Agreed
SP4	Agreed
SP5	Agreed some conflict.
SP6	Agreed
SP7	SC: Do not agree high conformity. The scheme does not respond positively to local character and context and conflicts with these aims for the reasons as set out in my main para.6.15,6.16, 7.4[4] and section 4 of my supplemental proof.

Appendix B – Section 2 emerging Local Plan

Policy	Response to Mr Firth's 'Degree of Conformity' column
Section 2 Local Plan	
SG1	Agreed
SG2	Agreed
SG4	Do not agree that this is a 'most important' policy. Agreed some conflict but not cited by lpa in the putative reasons for refusal..
SG7	Agreed
SG8	Agreed, however it is not that case that there is no NP. The TNP is only very recently out to Reg 14 consultation. It is not made nor at an advanced stage.
ENV1	SC: I do not agree that there is high conformity. I identify a material conflict, in particular Para.s C. (v) BNG and E Countryside which states development will only be permitted where it would not adversely affect the intrinsic character and beauty of the countryside and complies with other relevant policies. I identify a conflict in my PoE at para.6.4, 6.5 and 7.5 and in my supplemental proof at para.4.2 and 4.10.
CC1	SC: Climate Change – I do not find convincing evidence that the design of the appeal proposals was led by a genuine desire to respond positively to climate change through low carbon decentralised energy technologies such as renewables e.g., PV or solar thermal, fabric first approaches to design and construction and cooling through the applied use of green infrastructure. The suggested conformity is at best skin deep but not dyed in the wool. I refer to the evidence of Catherine Bailey in the note attached to this supplemental proof. In particular CB identifies material errors in the calculation of Canopy Cover Assessment.
PP1	Agreed.

SS14	Mr Ryan deals will this in his rebuttal. I do not agree that the policy is out of date as this is factually not the case and therefore the 'tilted balance' is not engaged, as per JR's rebuttal. Agreed some conformity with thrust of policy.
DM1	Agreed
DM2	Agreed
DM4	Agreed
DM8	Agreed
DM9	SC: I do not agree that there is a high degree of conformity. Fundamentally, the development density and massing of the appeal proposals is at odds with the peripheral location of the site on the settlement edge as it transitions to open countryside with existing plotland "farms", it necessitates hedgerow removal and provides for inadequate areas of POS. The scheme thus represents over development in this context which it fails to respect. This matter is rehearsed in my PoE at para 5.19[6], 6.13, 6.14 and 6.18, and above at section 4.0.
DM11	Agreed
DM12	SC: I do not find conformity insofar as 'high standards of design, construction and layout are not promoted in general. There is a degree of conformity with other detailed matters.
DM15	SC: Strongly disagree with high conformity. The scheme clearly fails to comply with the policy's design aspirations as set out in detail in main PoE especially para. 5.17, 5.19[6], 7.5[6] and 4.10 above. Accordingly, I conclude there is a low degree of conformity or actual conflict with this key policy.
DM16	Agreed
DM18	SC: Do not agree with high conformity. Consider actually a low degree of conformity as open space is substandard both in terms of the quantum provided in this location and the demands placed upon it for multiple user needs. The whole of the POS is included in the SUDS detention basin (see Evans drwg. 2229/RE/01 forming a depression of 1m depth and sides graded to 1 in 3. My supplemental proof considers this matter at para. 2.2 (i) above.
DM19	Agreed
DM20	SC: In part only as better links to adjacent PROW to the West is highly desirable and not achieved criterion (i) is not satisfied
DM21	SC: Fails to secure connection to PROW to west and fails criterion (iii) as per DM20
DM22	Agreed
DM23	SC: Details of how criterion (i) is met to provide 'at source' measures are required to demonstrate full compliance.
DM24	SC: Although the SUDS scheme may be compliant in terms of managing surface water, from a design, amenity and functionality view the SuDS scheme is insufficient. The SuDS feature

	<p>encompasses the overwhelming majority of the POS and therefore significantly limits its enjoyment as POS in the wetter winter months. Further its biodiversity benefit is diminished as it will be subject to significant disturbance from play use and pet disturbance. DM24 states that “opportunities should be taken to integrate sustainable drainage within the design of the development, to create amenity space, enhance biodiversity and manage pollution. Existing drainage features such as ditches and ponds should be retained on site where possible as part of SuDS schemes.” In this instance, several existing drainage features have been removed or will be compromised by proposed development with the SUDS detention basin forming the whole of the public amenity space and requiring excavation close to retained trees with potential damage to root protection zones. Whilst the SuDS is integrated into the design it extends across the whole of the sole POS outside of the dedicated play area.</p> <p>I consider there is ‘some conformity’</p>
DM25	<p>SC: I do not agree that there is ‘good conformity’. The low energy appliances noted cannot reasonably be conditioned. I am unaware of any concessions to sustainable construction or other carbon reduction technologies e.g., micro generation such as Photo voltaic panels, solar thermal panels.</p>

APPENDIX 2: Canopy Cover and BNG Assessments

Catherine Bailey BSc. (Hons), MPhil. MA. CMLI

1. Canopy Cover Assessment

1.1. The following assumptions are made as part of the assessment (CD 13.8 para 2.6)

- *That the trees are healthy when planted*
- *That they are planted by a competent person in a suitable planting pit*
- *That they are sufficiently maintained until independent in the landscape (ref BS 8545:2014 – Trees: from nursery to independence in the landscape - Recommendations)*
- *That they are the right tree in the right place*
- *That they are not diseased, dying, or vandalised, or if they are, that they are replaced during the next available planting season*

1.2. In relation to the indicative Landscape Masterplan (2268 001 by Liz Lake Associates, (CD 13.7) a line of street trees is indicated in the narrow verge alongside the main access road. It is not clear how these trees will be compatible with either underground utilities, which are assumed will also run through the grass verge, or lighting provision (lighting columns are not shown in relation to the tree-planting). In addition, many of the other trees are shown in proposed private gardens, straddling boundaries (which is not actually feasible as the garden fences would have to run through the centre of the trunks or the tree would be so close to the trunk that damage to either fence or tree would result in a short time) or located in existing hedgerows where tree establishment would very difficult due to competing hedgerow vegetation. Maintenance would be impossible to carry out due to the access requirements. I would suggest these are not therefore '*... the right tree in the right place*'.

1.3. The assumptions made in the Canopy Assessment that trees '*... are sufficiently maintained until independent in the landscape...*' and if they are diseased, dying or vandalised '*that they are replaced during the next available planting season*' (CD 13.8) are hard to enforce, especially over time and once establishment periods (3-5 years often) have expired. Therefore, the assumption that 166 No trees planted means 166 No trees surviving after 10 or 20 years is improbable at best. Therefore I believe this assumption is not deliverable.

1.4. CD 13.8 para 2.8 identifies that 166 No trees are proposed but assumptions are made as to whether those trees will be planted as small, medium or large girthed specimens which has a bearing on the output of the calculation especially in the early years. For instance, the assumption is made in the Canopy Assessment that the majority of the

trees (124 No.) are planned as large-girthed trees. However, this is not confirmed on-plan or in an accompanying landscape strategy. Tree size at planting has a huge bearing on cost. Large girthed, semi-mature trees can cost upwards of £1000 to supply and plant, whilst regular or select standards with girths of 12cm are considerably less. In my experience, semi-mature trees are not usually planted in large scale residential schemes in Colchester. I do not see how it will be enforced that semi-mature trees will be planted as part of the scheme, and therefore that the 10% gain can be achieved in Year 1 as claimed.

- 1.5. Additionally, the calculation in the Table at CD 13.8, para 2.5, identifies that small -girthed trees are to be judged as having a canopy area at Year 1 of 5.3m² based on Forest Research evidence. However, in the actual assessment 20 No. small-girthed trees are identified as having a canopy size of 120 m² in Year 1. The calculation therefore assumes they will each have a canopy area of 6m² which is not the same figure as the Forest Research tool indicates. The same has been done for both the medium and large-girthed trees. No explanation is given as to why the canopy m² in the assessment is different from the Forest Research tool. The result appears to be that the canopy cover is over-estimated.

Summary and conclusion:

- 1.6. The Canopy Cover Assessment indicates 166 No. trees are to be planted but assumes that all the sites identified for planting are suitable which I judge that they are not, that they can be suitably maintained until self-sustaining, which I dispute as some are in private gardens or inaccessible, and that diseased, dying or vandalised trees will be replaced which I deem is not enforceable after Years 3-5.
- 1.7. The assessment tool appears to have been misapplied to the assessment resulting in an over estimation of canopy cover.
- 1.8. The apparent assumption in the Canopy Assessment that the majority of the trees (124 No.) will be planted as large-girthed semi-mature trees, and therefore create 10% additional canopy cover more quickly, seems improbable and would be difficult to enforce.

2. Biodiversity Net Gain Assessment (BNG)

Generally

- 2.1. The Biodiversity Net Gain (BNG) metric is a tool that can be used to help inform plans and decisions, but it has limitations and needs to be used in accordance with the principles and rules set out for use with DEFRA's Biodiversity Metric 3.0. The metric does not override existing planning policy or legislation, including the mitigation hierarchy, which needs to be considered when the metric is applied thus avoiding any adverse impacts to biodiversity as a first step. BNG assessment is a tool for assessing the relative value of biodiversity, its losses and

gains. The metric is not a substitute for good quality and functional landscape and nature-based design.

- 2.2. The baseline is described in the assessment (CD 13.5) as:
- Mainly horse-grazed pastures
 - An area of trees and hedgerows at the centre of the site
 - Boundary hedgerows
 - Two ponds
 - Areas of hardstanding and buildings
- 2.3. However, these baseline habitats themselves are not identified on a plan amended to the assessment. The reader is left to interpolate from the latest indicative Landscape Masterplan (2268 001 by Liz Lake Associates) (CD 13.7) which is appended to the BNG assessment. This latter plan is an illustrative document where the symbols for different elements, such as existing and proposed trees, are not precise nor clear to the viewer. There is too much room for interpolation and misinterpretation. The Landscape Masterplan does not show the extent of existing habitat nor indicate that which is to be lost, such as the full width of hedgerows and neighbouring scrub, both at the centre of the scheme and at the boundaries.
- 2.4. There is little commentary or explanation accompanying the BNG assessment. So, for instance in the detailed results (CD 13.5) an area of 3.20 ha of grassland is to be lost, equivalent to 6.40 habitat units and only 1.02 ha are to be retained/created. And yet the proposed value of this retained/new habitat is 5.48 units. How has this been arrived at? Without an appropriate detailed commentary, the assessment and analysis are not transparent.
- 2.5. The assumption appears to be that the proposed grassland will be of much better quality even though it is a much smaller area, greatly fragmented and subject to much greater recreational pressure of i.e., of people, dogs and cats. In addition, it has to be able to cope with inundation in the SuDS area which forms a large part of the so-called grasslands. The reality is that most of this category will not function as wildflower meadows as claimed but will only succeed as amenity grassland and should be assessed as such.
- 2.6. The loss of the ponds is presumably recorded under lakes in the assessment. The proposed area is to be halved but the waterbody category will keep the same value. How has this result been arrived at? Will the new waterbody be so much better in quality/condition than the existing? This assumes careful management to prevent over-shadowing, build-up of leaf litter, drying-out, vandalism. How this will be achieved and enforced is far from transparent. The same situation arises with:
- Native hedgerow with trees associated with a bank or ditch
 - Native species rich hedgerow
- 2.7. There appears to be an inordinate reliance on enhancing the value of existing habitat types, rather than creating new ones in order to generate the gain, plus over-optimism on the quality or condition that

can be obtained and sustained, particularly in relation to grassland. If the number of units was reduced, the opportunity would be generated to create areas where the primary focus is ecological enhancement and net gain with separate areas dedicated primarily for recreation.

- 2.8. There appears to be little justification for the existing habitats to be judged of low strategic significance, which appears to be based on them not being identified as such in the Tiptree Neighbourhood Plan. As far as I'm aware, a Neighbourhood Plan is not a primary document for identification of habitat importance and value.

Relation to design

- 2.9. The DEFRA metric principles are clear that the metric design aims to encourage enhancement of the natural environment not its transformation and that well-established habitats should be retained even if less distinctive. In the case of this development there are justifiable reasons in terms of landscape and sense of place for more of the existing vegetation and other habitats to be retained and incorporated into a better connected and quality of green space and infrastructure, rather than the fragmented and depleted network that is to be created.
- 2.10. It is not clear from the latest indicative Landscape Masterplan (2268 001 by Liz Lake Associates) CD 13.7) where the new hedgerows are to be created but it appears predominantly to be through the back gardens of the properties on the western boundary. These proposed hedgerows are unlikely to attain the size and width of a traditional Essex hedge (which is traditionally quite tall and unkempt) as they will be treated at best as ornamental garden features. If they survive, they will be unlikely to form traditional landscape features therefore in keeping with local landscape character. Also, they will not be joined up as their continuity will be broken up by the close-boarded fencing dividing each garden. The Metric principles encourage compensation habitats to be '*more, bigger, better and joined up*' and I suggest this will not be fulfilled. This is not good landscape design.

Summary and conclusion:

- 2.11. The Biodiversity Net Gain (BNG) metric is a tool that can be used to help inform plans and decisions, but it has limitations and needs to be used in accordance with the principles and rules set out for use with DEFRA's Biodiversity Metric 3.0. It is not clear that these principles have been adhered to.
- 2.12. The transparency and assumptions used in the assessment are not always clear. It feels as though some of the assumptions related to establishment, retention and maintenance are over-optimistic and delivery hard to enforce.
- 2.13. There appears to be an inordinate reliance on enhancing the value of remaining, reduced areas of habitat, rather than creating

dedicated joined-up habitat in order to generate the gain. There are particular concerns in relation to grassland, hedgerows and the ponds.