
Land adjoining The Gables, Kelvedon Road, Tiptree, CO5 0LU

Rebuttal Proof of Evidence

James Firth MRTPI

PINS Reference:
APP/A1530/W/21/3278575

Colchester Borough Council Application Reference:
190647

1. Scope of this Rebuttal

1.1. This rebuttal addresses points raised in Mr James Ryan's Proof of Evidence PoE in respect of appeal APP/A1530/W/21/3278575.

1.2. I address the following key points arising from Mr Ryan's PoE to assist the Inspector's consideration of the above appeal:

- Identification of relevant policies.
- Identification of most important policies.
- Incorrect assessment of whether most important policies are out of date.
- Neighbourhood Plan.
- Failure to properly consider compliance with the development plan as a whole.
- Failure to undertake proper planning balance exercise.
- Disregarding of relevant material considerations as irrelevant.
- Incorrect weighting of material considerations in the planning balance.

2. Identification of relevant policies

- 2.1. James Ryan, in his proof of evidence, incorrectly identifies the relevant and most important policies to the application. The decision maker as part of the appeal must make a decision on the proposals as a whole, when assessed against the development plan and material considerations such as the (National Planning Policy Framework (NPPF) taken as a whole. The identification of policies “material to this appeal” at paragraph 5.5 of James Ryan’s proof of evidence focuses only on those policies in the current development plan that are relevant to the disputed issues in the appeal. When considering the application proposal and, in particular, their compliance with the development plan and the NPPF when taken as a whole, it is necessary to do this in the context of all relevant policies. To focus on a particular part of the development plan, i.e. those policies considered relevant to the disputed issues at appeal, risks creating a skewed or misguided assessment of the degree of compliance of the proposals when assessed against the development plan as a whole.
- 2.2. It is accepted that the policies identified by James Ryan at paragraph 5.5 will be relevant to the appeal proposal. In my assessment of the relevant policies I also identify these policies as relevant to the appeal, along with a number of other policies that are also relevant and should be considered when assessing the overall compliance of the proposals with the development plan.
- 2.3. Policy SA H1 is identified as relevant by James Ryan. The Site Allocations DPD 2010 (CD 8.3) deals with housing allocations within Tiptree through a standalone policy at SA TIP1. Allocations for Tiptree would have been identified through this Tiptree specific policy. For this reason I identify that policy as the relevant policy for housing allocations. However, I would accept that policy SA H1 may also have some relevance at a strategic level.
- 2.4. With regards to the Section 2 Local Plan (CD 9.5), the policies identified by James Ryan are similarly limited to those areas considered material to the appeal. In my assessment I identify a further range of relevant policies that should be considered with regards to the consideration of the proposals and the planning balance. It is accepted that Policies SG 1 Spatial Hierarchy and SG2 Housing Delivery will also have relevance to the proposals and I accept these should be included in the assessment of the proposal. These are referenced at para 8.21 and in Appendix B p1 of my original proof of evidence.

3. Identification of most important policies

3.1. At paragraph 5.8 James Ryan identifies the policies he considered most important to the appeal as:

- Policy SP7 - Section 1 Plan
- ENV1 - Adopted Core Strategy
- UR2 – Adopted Core Strategy
- DP1 - Development Policies Development Policies Document
- ENV1 - Section 2 Local Plan
- DM15 - Section 2 Local Plan

3.2. This assessment again focuses exclusively and incorrectly on those policies most relevant to the disputed issues at appeal rather than those policies most important to the determination of the application proposals. As required by Section 38(6) and paragraph 11 of the NPPF consideration is needed of the development plan and material considerations as a whole. The policies considered most important to the application proposals are identified in my proof of evidence as Policy SA TIP1, SA TIP2, DP5, SA H2 and ENV1.

3.3. With regards to the policies identified by James Ryan I would comment as follows:

Policy SP7 - Section 1 Plan (CD 8.5)

3.4. At paragraph 5.40 James Ryan acknowledges that this policy sets out 12 place-shaping principles which all new development should reflect, where applicable. He therefore acknowledges that this policy is relevant to all new development, and if held to be most important in this case would arguably need to be considered as most important in all applications. That is clearly not the case, and whilst relevant to all new development this policy should not be considered as most important for all proposals. It is a criteria based policy containing a number of bullet point principles to be reflected in all new development where applicable. It is not specific to the scheme or the site in land use terms. I therefore do not consider this a most important policy and consider the assessment by James Ryan to be incorrect. I am in agreement that the policy is relevant to the proposals, and of the relevance of the NPPF to design matters also. I agree SP7 should be afforded full weight.

3.5. James Ryan, at paragraphs 5.22 – 5.24, deals with the weight to be afforded to ENV1 with respect to compliance with the NPPF and references other appeal decisions in this regard.

- 3.6. The decision on the Maldon Road appeal referenced (CD 7.2) was issued on 18 August 2020. The Section 1 Local Plan was adopted in February 2021. The policy context for the appeal has therefore significantly changed since this previous decision. Whilst the Section 1 Local Plan does not supersede Core Strategy Policy ENV1, it does supersede Policy H1 regarding housing. In this respect Policy SP4 of the Section 1 Local Plan (Meeting Housing Needs) sets a housing requirement of 920 dwellings per annum, and a requirement to deliver a minimum of 18,400 homes over the plan period (2013-2033).
- 3.7. The strategy to meet this need and deliver the spatial strategy is to be further detailed in the Section 2 Local Plan, including Policy SS14 Tiptree, which acknowledges the need to amend the settlement boundary, and identifies the locations to which growth should be directed. In this context it cannot be assumed that policy ENV1 should be afforded the degree of weight that it was in previous decisions and I argue in my proof of evidence that given this, and the weight that should be afforded to emerging Policy SS14 Tiptree, the settlement boundary for this part of Tiptree, and the part of Policy ENV1 that deals with settlement boundaries should be considered out of date. This issue is not addressed by James Ryan.

ENV1 - Adopted Core Strategy (CD 8.1), and ENV1 – Section 2 Local Plan

- 3.8. Policy ENV1 of the Core Strategy specifically refers to the protection of unallocated greenfield land outside of settlement boundaries (to be defined/reviewed in the Site Allocations DPD) will be protected and where possible enhanced. The review of settlement boundaries for Tiptree was carried out through Policy SA TIP1 of the Site Allocations DPD in 2010, twelve years ago. The appeal site of course contains in part existing development in any case, but with respect to the greenfield parts of the site it is therefore considered that this policy and the settlement boundary must be considered out of date.
- 3.9. It is noted that James Ryan accepts that the spatial element of the policy was not used as a reason for refusal with regards to the appeal scheme. Given the policy is still identified by James Ryan as most important but not used as a reason for refusal, by consequence therefore it must be assumed that he considers this part of the policy to either be out of date or that the proposal are in conformity.
- 3.10. Policy ENV1 in the emerging Section 2 Local Plan is similarly identified as a most important policy in my proof of evidence.

Policy UR2 Adopted Core Strategy, Policy DP1 - Development Policies Development Policies Document, and Policy DM15 - Section 2 Local Plan

- 3.11. Whilst it is agreed this policy is ‘highly relevant to the design reason for refusal’ as stated at paragraph 5.25 of James Ryan’s proof, this does not make it a most important policy for determination of the application. As with Policy SP7 this policy will be relevant to all applications involving built development. There is no specific justification given by James Ryan as to why the policy is considered most important in this case.
- 3.12. Similarly with regard to Policy DP1 and Policy DM15 of the emerging Section 2 Local Plan, James Ryan focuses on the design aspects of the proposals. Whilst I accept these policies are relevant, they are criteria based, will weigh in different directions in different parts of the policy, and will apply to all applications for built development. They should not be considered to be most important to the application proposals.
- 3.13. James Ryan in his proof of evidence fails to consider those policies that are part of the development plan that concern the principle of development on the site, including in particular policies identified on the adopted or emerging policies map as applying to parts of the appeal site. In my evidence I have identified most important policies as those within the Site Allocations document that were intended to deal with growth in Tiptree, as well as policies that are identified on the policies map as applying to the site, as well as policy ENV1 in its role in relation to the settlement boundary. The policies considered most important to the application proposals within the adopted plan are therefore in my proof of evidence as Policy SA TIP1, SA TIP2, DP5, SA H2 and ENV1. The most important policies from the Section 2 emerging Local Plan, I consider are SS14, SG4, DM11 and ENV1. This again reflects the land use designations on the appeal site, as well as Policy SS14 which deals specifically with growth in Tiptree and I consider this to be the most important policy within the emerging Local Plan.
- 3.14. I deal with Policy SS14 further below but the interpretation of this policy in James Ryan’s proof of evidence is also misguided. In particular the analysis fails to recognise the requirement of the proposed main modifications version of the policy for **a minimum** of 400 additional homes. Thus, this is a “floor” and not a “ceiling”. Consequently, the delivery of anything less than 400 is a breach of policy, whereas anything above 400 would remain policy compliant. James Ryan’s analysis of the policy fails to highlight this important consideration.

4. Incorrect assessment of whether most important policies are out of date

- 4.1. There is little consideration within James Ryan’s proof of evidence of whether the identified most important policies are out of date. Some reference to this is made at paragraph 5.64 however this fails to consider the relationship between the various parts of the Development Plan for Colchester, and the considerations with regards to the Tiptree Settlement Boundary as set out in my proof of evidence. This step is not given proper consideration, nor is an assessment of whether the resulting basket of most important policies are out of date carried out. As identified in my proof of evidence a number of the policies have been overtaken by events and other parts of the adopted or emerging development plan. As a consequence they are not of assistance to the decision maker and should be considered to the out of date.
- 4.2. Paragraph 5.65 of the James Ryan proof of evidence refers to the appellant’s case that the most important policies are out of date, but provides no explanation or analysis as to why he disagrees with this assessment.
- 4.3. The only reference made is to five year housing land supply which is of course not the only reason why such policies should be considered out of date as is clear from the Framework.
- 4.4. As confirmed in the *Peel* judgment (CD 14.13), policies can become out-of-date where they are overtaken by events. It is clear that events have rendered the settlement boundary for Tiptree as referenced within Policy ENV1 of the Core Strategy out-of-date for the following reasons.
- 4.5. Firstly, Policy SP3 (Spatial Strategy for North Essex) of the adopted Section 1 Local Plan states: *“development will be accommodated within **or adjoining settlements**, according to their scale, sustainability and existing role, both within each individual district and, where relevant, across the wider strategic area”*. (My emphasis).
- 4.6. As noted by the Inspector in the Rayne Road (which concerned a site in Braintree District, which shares the Section 1 Local Plan with Colchester) appeal decision (CD 13.14)

“There is clearly some tension between the strict confinement of development to within settlement boundaries by policies CS 5 [which seeks to control development outside settlement boundaries to uses appropriate to the countryside] and RLP 2, and the more recent S1LP Policy SP 3, which accepts further housing growth both within and around [the settlement]. However, decisions over any changes to these boundaries depend on the eventual adoption of the S2LP.”

- 4.7. Notably, in the case of Tiptree, the emerging Section 2 Local Plan will not enact changes to the boundary required to deliver the settlement's growth, instead leaving this to the Neighbourhood Plan.
- 4.8. The Inspector in the Rayne Road appeal (CD 13.14) went on to note that Policy SP3 of the Section 1 Local Plan "*provides general support for this [edge of settlement boundary] proposal, since this envisages further development adjoining the town [Braintree], relative to its scale, sustainability and existing role. As part of the recently adopted S1LP, full weight is given to the support provided by Policy SP 3*".
- 4.9. Secondly, it is clear that development needs cannot be met without development beyond the settlement boundary, as confirmed through the Section 1 Local Plan and emerging Section 2 Local Plan. The evidence of Sam Hollingworth with regards to housing further supports this.
- 4.10. Thirdly, the Section 2 Local Plan in Policy SS14 sets out a clear requirement for an amendment to the settlement boundary of Tiptree. The boundary therefore must be considered out of date. It is not possible to have a temporary settlement boundary, and there is no certainty that a neighbourhood plan will be delivered at all or in a form that meets relevant requirements and passes basic conditions. A clearer approach would have been for the Section 2 Local Plan to amend the settlement boundary itself but it has not done so. The current settlement boundary dating from the 2010 Site Allocations document must therefore be considered out of date and is actually recognised to be so within the policy.

5. Neighbourhood Plan

- 5.1. James Ryan confirms he is aware a new draft Tiptree Neighbourhood Plan will shortly reach Regulation 14 stage, and I am aware that since the proof of evidence deadline that this draft of the plan has now been published for consultation. It is confirmed by James Ryan that he considers the plan cannot be given any weight in the determination of this appeal.
- 5.2. I would agree the plan remains insufficiently advanced and should hold very limited weight in the determination of the appeal.
- 5.3. Given the consultation draft of the Neighbourhood Plan has been published since the deadline for proofs of evidence. I have further considered its relevance below.
- 5.4. The Tiptree Neighbourhood Plan (TNP) (Regulation 14) Draft ('the Draft TNP') was published for consultation on 11 March 2022 (CD 14.15).
- 5.5. The Draft TNP is accompanied by Strategic Environmental Assessment of the Tiptree Neighbourhood Plan Environmental Report March 2022 ('the TNP SEA 2022') (CD 14.16).
- 5.6. In addition, Tiptree Neighbourhood Plan: Strategic Highways Note (February 2022) ('the TNP Highways Note') (CD 14.20) is provided as a supporting documents alongside the TNP.
- 5.7. The previous attempt at preparing a TNP failed at the Examination stage, with the Examiner identifying a number of concerns [CD 7.20].
- 5.8. Such concerns including that it was 'more than likely' that there had been a premature fixing of the spatial strategy, with decisions on the direction of growth made ahead of SEA, contrary to the Environmental Assessment of Plans and Programmes Regulations (2004) ('the SEA Regulations') (CD 14.23).
- 5.9. Other concerns included the fact that the spatial strategy was predicated on the proposed new link road, with the Examiner agreeing with an objector to the TNP that there was "*no evidence to suggest that the proposed link road is needed, would be of benefit, is deliverable, or represents the optimum route for a new link road*".
- 5.10. Subsequent to the outcome of the previous TNP, Colchester's Local Plan Section 2 (LPS2) has been subject to main modifications relating to Policy SS14 (which concerns Tiptree and which will guide the TNP).
- 5.11. These include:

- Number of new homes specifically required to be delivered in Tiptree through the TNP reduced from 600 to 400...
 - ...but number expressed as a minimum;
 - Amendments to preferred areas of growth (but still include that which is commensurate with the Appeal site);
 - Insertion of the following, regarding the TNP and policies to support new infrastructure: “*This will include a detailed transport assessment with a view to confirming provision of the first phases of a road between the B1022 and B1023*”
- 5.12. In respect of the final point, an objection was made by Bloor Homes in response to consultation on the proposed main modifications (comment reference 8987). This was summarised as follows by the Colchester in its Representations Summary (December 2021) (CD 14.24):
- “Delivery of first phase of Link Road through the Neighbourhood Plan is premature fixing of the Neighbourhood Plan strategy, contrary to SEA regulations. Questionable whether there is potential for a new link road, no robust evidence to suggest deliverable. Lack of evidence that link road would be appropriate. See attachment for further information.”*
- 5.13. The Council’s response, in relation to changes to the Plan, was as follows:
- “None stated - other than leaving ref to the link road to the Neighbourhood Plan”.*
- 5.14. Whether the Council’s response is sufficient to satisfy the Examination Inspector that this main modification should remain is yet to be seen – at the time of writing the Inspector’s Report is awaited. However, if it is, it is clear that this main modification to Policy SS14 is *not* seeking to *require* a new link road of the TNP, and thus did not give rise to any concerns regarding the premature fixing of a strategy. Rather, the issue of a new link road – and whether or not it would be proposed – is a matter for the TNP to consider.
- 5.15. Logically, the LPS2 cannot have committed to the provision of a new link road. The Sustainability Appraisal of the LPS2 (CD 9.7) (including LPS2 Main Modifications) did not consider the new link road. In such circumstances, if the LPS2 *were* to direct provision of a new link road between the B1023 and B1022, in the absence of any Sustainability Appraisal of such an approach, this would render the LPS2 clearly at risk of being found contrary to the SEA Regulations, and its adoption vulnerable to legal challenge under S113 of the Planning and Compulsory Purchase Act 2004.
- 5.16. The Draft TNP SEA (CD 14.16) seeks to provide the justification for the proposed strategy in the Draft TNP. As per Regulation 16 of the SEA Regulations (CD 14.23), the SEA of the TNP is required to explain the reason for the selection of options, and the rejection of reasonable alternatives.

- 5.17. As already noted, concerns with the previous TNP included those relating to its SEA, including the premature fixing of a spatial strategy, and the over-reliance on a new link to determine the spatial strategy.
- 5.18. On review of the Draft TNP (CD 14.15) and accompanying Draft TNP SEA (CD 14.16), there are evident concerns that issues that caused the previous TNP to fail at Examination are being repeated.
- 5.19. It is clear, for example, that the Draft TNP SEA has considered the potential for sites to facilitate delivery of the new link road the Draft TNP proposes as a determinant factor in site and option selection. There are clear suggestions that the draft proposals in the Draft TNP have again been formulated based on the premature assumption that the strategy should seek to deliver a new link road between the B1022 and B1023. This appears to be made on the mistaken assumption that LPS2 expressly supports the provision of such a road. At paragraph 5.7 of the Draft TNP SEA it states:

“The Parish Council is focused on growth scenarios that would deliver, enable or facilitate road infrastructure upgrades to relieve traffic pressure on ‘hot spot’ locations, most notably the stretch of the B1023 that passes through the village centre, known as Church Road. It is not easy to envisage ‘village bypass’ options; however, the potential for new ‘relief roads’ to ease the situation can be envisaged, including a road linking the B1022 and B1023 to the north of the village, as supported by the Local Plan. In the long term, new relief/link roads delivered alongside new development could potentially serve to effectively bypass the village. As well as addressing traffic concerns, new road infrastructure could support local bus services” (Emphasis added).

- 5.20. In addition, at paragraph 2.7 of the Draft TNP SEA it states:

“An important point to note is that Main Modifications version of the LPS2 introduced two key changes, relative to the submission version. Firstly, the housing requirement was reduced from 600 to 400, to reflect a new committed site, specifically a site to the east (‘Barbrook Lane’) which gained permission in 2020 for 200 homes, following a recovered appeal. Secondly, there is now explicit support for delivering the first phases of a new link road between the B1022 and B1023 (Tiptree’s two main roads) to the north of the village.” (Emphasis added).

- 5.21. The Draft TNP SEA does not include an assessment of the sustainability or otherwise of a new link between the B1022 and B1023, and instead appears to proceed on the false basis that this is required of any TNP and therefore there is no alternative option to this. As discussed, this cannot be the case.
- 5.22. A further concern with the reliance on a new link to inform the spatial strategy is that the central section of the proposed route lies outside Tiptree Parish and in neighbouring Messing-cum-Inworth Parish.

- 5.23. To be completed, the link road requires land that is beyond the scope of the TNP – and located within Messing-cum-Inworth Parish. The Draft TNP acknowledges this at paragraph 7.12:

“The first phase of the link road will be incorporated into the allocated sites at Highland Nursery and Elms Farm (Map 7.4). However the centre section of this road lies in the parish of Messing and, although this land was offered on the Call for Sites, it is outside the scope of this Neighbourhood Plan. Additional phases of works to be delivered outside of this Neighbourhood Plan through future plan making would connect the first phases together”.

- 5.24. The emerging LPS2 requires the TNP to include preparation of a *detailed* transport assessment, with a view to confirming provision of the first phases of a road between the B1022 and B1023.
- 5.25. However, within paragraph 13 of the TNP Highways Note (CD 14.20), it expressly confirms that it has *not* been produced to the level of detail of a Transport Assessment. Instead, it states that it is “*high-level*” document, and that this approach was agreed with Essex County Council. Whilst such an approach may have been agreed with Essex County Council, it is not what the emerging LPS2 requires.
- 5.26. In any case, the TNP Highways Note fails to explain how one of the key issues with the previous attempt at a TNP could be overcome: how the new link road could be delivered in full, despite this requiring land beyond the scope of the TNP. It is not of course a requirement of the LPS2 for the Highways Note to do this. However, if the TNP is to propose a strategy predicated on delivery of such a road, then clearly it will have to not only shown that such a road is sustainable, but that it is deliverable. It may be that this is beyond the scope of the TNP Highways Note, but it is required to be evidenced in some form, if the TNP is to continue to pursue the strategy the Draft TNP suggests.
- 5.27. Lack of ability to deliver a new link road may not be such a key issue of concern for the TNP, if it was not for the fact that it is the aspiration for the new link road that has driven the direction of the draft spatial strategy and has been a fundamental, determinant factor in the site selection process in the Draft TNP.
- 5.28. Doubts as to the deliverability of the new link road proposed in the previous attempt at preparing of a TNP were one of the reasons for its failure at Examination. The Draft TNP appears to seek to address this by only proposing the first sections of the link road – elements of the proposed route that lies within Tiptree Parish. However, without any scope to deliver the central section of the new link road, simply providing the first sections does not achieve any of the purported benefits of the new link road. Accordingly, the selection of a strategy on the basis that it will deliver a new link road – and the purported benefits of this – is inherently flawed.
- 5.29. Another, significant flaw with the Draft TNP SEA is its apparent failure to acknowledge that the LPS2 requires a *minimum* of 400 additional dwellings to be allocated through the TNP.

5.30. This is particularly problematic, as the express reason for the rejection of one of the options in the Draft TNP SEA (citing text provided by the TNP Steering Group) is “*because it would involve support for too many homes in the plan period.*”

5.31. Notably, the Draft TNP SEA fails to consider the provision of more than 400 homes. This is evidently a “reasonable alternative”, in the context of the legal requirements of a SEA process given the emerging LPS2 expressly identifies this number as a minimum; and that the Draft TNP SEA suggests suitable sites able to contribute more. It appears that the upper number of new homes to be provided through the TNP has been prematurely determined without proper consideration and appraisal through SEA of alternative options.

5.32. The Draft TNP SEA considers various sites and concludes, following a shortlisting exercise, there are only three site combinations that warrant further consideration:

- Tower End (including the Appeal site) (200 homes)
- Highland Nursery (200 homes)
- Elms Farm (200 homes)

5.33. In relation to the above, the TNP SEA 2022 states, at paragraph 5.18:

*“These three broad sites could potentially come forward in **any** combination”* (Emphasis added).

5.34. On the basis of these three sites, four reasonable options are identified by the Draft TNP SEA, comprising various combinations of these three sites.

5.35. All but Growth Scenario 1 include the Appeal site.

5.36. Under the heading ‘Reasons for supporting the preferred approach’ the TNP Draft SEA states:

“The Steering Group provided the following text:

*“Scenario 1 is preferred in light of the assessment, which is considered to align well with the findings of our site selection process, as set out in the Site Selection Topic Paper. Scenario 1 is considered to align strongly with the established neighbourhood plan objectives, and it is noted that the assessment presented above does not highlight any ‘significant negative effects’ in respect of the SEA objectives. Having said this, we recognise that Scenario 1 gives rise to certain tensions with environmental and wider sustainability objectives, and that there are potentially certain draw-backs relative to alternatives. The assessment serves to highlight a particular tension in respect of loss of best and most versatile agricultural land, which unfortunately is largely unavoidable, but other issues/tensions, including in respect of heritage and landscape objectives, can and will be addressed through stringent development management policy, developed in collaboration with the land-owners (to ensure that policy requirements are achievable). Briefly, taking the non-preferred scenarios in turn: Scenarios 2 and 3 are **not supported** primarily because the **opportunity to deliver a new strategic link road** across the north of the village, **in line with the emerging Local Plan proposal/requirement, would not be realised**; whilst Scenario 4 is not supported primarily because it would involve support for **too many homes** in the plan period”. (Emphasis added).*

- 5.37. In short, the only reason for the rejection of a strategic option that includes the Appeal site, as well as both Elms Farm and Highland Nursery, is that this would “involve support for too many homes” (TNP SEA table 6.1 and para 7.2 (CD14.16)). Such reasoning is patently flawed, having regard to the LPS2 setting a *minimum* housing requirement, and in the context of the NPPF’s exhortation to significantly boost housing land supply.
- 5.38. Separately, the only reason for rejection a strategic option that would involve the Appeal site plus one of either Elms Farm or Highland Nursery is that this would not deliver the proposed new link road – a new link which cannot be delivered by the TNP, and which there is no commitment to deliver through any other vehicle.
- 5.39. Importantly, the TNP Draft SEA clearly confirms there are no issues with the Appeal site in terms of its suitability for housing. Even if one were to overlook the TNP Draft SEA’s misguided rejection of the Appeal site on the basis that it would not facilitate delivery of the new link road, it acknowledges that the Appeal site *could* come forward for development as *well* as the sites required to facilitate the desired link road – the only reason for the rejection of this option is based on the entirely flawed premise that this would provide ‘too many’ homes.
- 5.40. Case law *Cogent Land v Rochford DC* (CD 14.25) confirms that defects in the SEA process can be rectified. There is potential for the TNP and its accompanying SEA to resolve defects as it is progressed. Indeed, one of key functions of the Regulation 14 stage is to enable such concerns to be raised and then subsequently addressed. The Appellant intends to make constructive representations to the current consultation on the Draft TNP, that will include raising the issues set out above.

5.41. I have already discussed the reasons for the lack of weight that can be attributed to the TNP in my original PoE. Whilst since that time a Regulation 14 draft has been published for consultation, the TNP, whilst a material consideration, still cannot carry anything more than very limited weight. This is consistent with the approach taken in the determination of the 'Peckleton Lane' appeal (CD 14.26) in which the Inspector concluded that the Desford Neighbourhood Plan could only be afforded very limited weight, as it had not yet reached the Regulation 16 consultation stage, and was subject to substantive unresolved objections.

6. Failure to properly consider compliance with the development plan as a whole

- 6.1. The assessment of compliance in section 6 of James Ryan's proof of evidence fails to properly consider the development plan as a whole.
- 6.2. The assessment of planning considerations carried out identifies the main issues as Housing need (considered by others), design (considered by others), as well as Habitat Regulation Assessment (RAMS) and Planning Contributions. It is noted that it is accepted the RAMS and planning contributions reasons are likely to fall away.
- 6.3. There is no reference made to highways despite this also previously forming a putative reason for refusal and it is unclear how this has been considered in relation to the development plan or planning balance.
- 6.4. At 6.8 – 6.11 James Ryan covers the assessment of compliance with the development plan as a whole. The approach adopted however does not demonstrate how the plan as a whole has been considered.
- 6.5. Paragraph 6.9 relies on the evidence of others and the evidence of David Plant RIBA demonstrates the scheme constitutes good design and meets with policy requirements.
- 6.6. The conflict with development plan identified by James Ryan at paragraph 6.10 includes policies CS ENV1 and DP1 of the adopted Local Plan, Policy SP1 and SP7 of the Section 1 Local Plan, and Policy ENV1 and DM15 of the emerging Section 2 Local Plan. Reasoning for this is not given within this part of James Ryan's evidence.
- 6.7. The policies where conflict is identified are however limited to design policies, with it being noted earlier within the proof of evidence that reasons for refusal were not based on the spatial elements of these policies.
- 6.8. I do not agree with the assessment of conflict with the above design policies. The evidence from David Plant demonstrates that the scheme has been designed to a high standard and meets with policy requirements. Furthermore in the appendices to my original proof of evidence I consider the degree of compliance with any criteria or standard based design policies using the plans and evidence provided by David Plant. I find there is a high degree of consistency with the relevant policies including policies within the adopted and emerging Local Plan. James Ryan's proof of evidence contains no such detailed analysis and it is not clear whether this has been undertaken.

- 6.9. The development plan, adopted and emerging, contains policies on matters such as Housing Standards (DM12), Design & Amenity (DM15), Open Space (DM18 and DM19), Sustainable Transport and Access (DM20 and DM21), and Parking (DM22), amongst others to guide development such as that proposed on the application site. These policies and standards are there for the precise purpose to set out and guide what will be considered appropriate development in the context of the development plan. The proposals achieve a high degree of compliance with these policy requirements as set out in my original proof of evidence and this must be considered when assessing compliance against the development plan.
- 6.10. With regards to the principle of development, given there is no conflict identified by James Ryan with the spatial components of the development plan dealing with the location of growth, strategic policies, or indeed the other parts of the policies identified by James Ryan as most important (James Ryan POE para 6.10), and that these are not used as reasons for refusal, it may be assumed that James Ryan considers those policies to either be out of date or that the proposals are in conformity with them.
- 6.11. The assessment against the Development Plan undertaken by James Ryan goes on to state at paragraph 6.11 that he *“does 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 an approval is warranted.”*
- 6.12. This assessment also appears superficial and is incorrect as there are numerous policies within the development plan and emerging development plan to which the proposals comply with a high degree of conformity. These are identified in my evidence and including policies dealing with sustainable growth locations and directions of growth. This includes Section 2 Local Plan Policies SG1 which identifies Tiptree as a Sustainable Settlement and Policy SS14 Tiptree which identifies a minimum requirement for 400 dwellings, a requirement to amend the settlement boundary and a preferred direction of growth to the north/north west of Tiptree. Such policies also include SP3 of the Section 1 Local Plan, which seeks to focus growth within *and adjoining* existing settlements. There is additionally a high level of compliance with relevant criteria based and design policies as set out above and in the evidence of David Plant.
- 6.13. There is a high level of compliance with the development plan as a whole and the statements by James Ryan in paragraphs 6.8 to 6.11 are not backed up by any analysis of wider policy compliance.
- 6.14. The importance of considering the Development Plan as a whole was recently reaffirmed in the ‘Broad Piece’ appeal decision (CD 14.27) In allowing this appeal, the Inspector noted that there was compliance with the Development Plan *“taken as a whole”*, despite conflict with an important, but out of date, policy.

6.15. Furthermore, a proposal can be consistent with the Development Plan as a whole, even if it is contrary to a Development which is *not* out-of-date. This was confirmed in the judgment in *R (on the application of Corbett) v Cornwall Council* [2020] EWCA Civ 508 (CD 14.28). In this case, it was found that a proposal was compliant with policies which supported tourism, was in direct conflict with policies for the protection of Areas of Great Landscape Value, but overall was concluded to be in accordance with the Development Plan *as a whole*.

7. Failure to undertake proper planning balance exercise; disregarding of relevant material considerations as irrelevant; and incorrect weighing of material considerations in planning balance

- 7.1. In his proof of evidence James Ryan fails to undertake a proper planning balance exercise. This is required in any case, regardless of whether it is undertaken on a tilted balance basis or flat balance basis.
- 7.2. Not only are certain material considerations incorrectly identified as irrelevant and not considered in the planning balance, but other material considerations are not mentioned at all or otherwise incorreced weighed in the balancing exercises.
- 7.3. Without a proper balancing exercise the decision taker is left without clear guidance as to how to consider the issues and how to weigh these in the balance with regards to overall decision making.
- 7.4. The benefits of the development in particular are not properly identified and considered.
- 7.5. With regards to planning balance, the assessment understand by James Ryan in section 7 of his proof of evidence is structured around the objectives of sustainable development, economic, social and environmental. Whilst I agree this can be appropriate the assessment then fails to properly consider the relevant considerations within this objectives.

Economic Benefits

- 7.6. The proof of evidence from James Ryan identifies similar benefits to those in my own proof of evidence, and indeed those in other relevant appeals including that at Maldon Road, Tiptree (CD7.2). The key difference is that I and the Inspector at Maldon Road give these benefits significant weight, whereas James Ryan gives these benefits no more than moderate weight.

- 7.7. Furthermore, at paragraph 7.6 of his proof of evidence, James Ryan suggests the economic benefits of arising from the construction of the houses should only be afforded moderate weight as they are for a limited time only and would be the result of any scheme. However, this view conflict with the Inspector's in the Hamble-le-Rice appeal decision (CD 14.30), in which the Inspector concluded at paragraph 64:

*“As agreed by the Council, the economic and social benefits of the proposal are worthy of significant weight. Given the national objective of significantly boosting the supply of homes, the provision of market and especially affordable housing carries significant weight. **I appreciate the Council's point that the economic benefits related to short term construction jobs, and the longer term boost to local spending power, could arise from any similar development.** However that **does not detract** from the fact that **this particular development offers these benefits, which I accord significant weight**”.* (Emphasis added)

- 7.8. The justification given by James Ryan at paragraphs 7.8-7.9 argues firstly that the benefits would come forward at a time when Colchester is emerging from the Covid-19 pandemic and this would increase the economic benefit of the scheme. However at paragraph 7.9 he goes on to argue the growth in business shows the economy is buoyant. It is however unclear whether James Ryan considers this to weigh positively or negatively in the balance.
- 7.9. The NPPF is clear at paragraph 81 that significant weight should be placed on the need to support economic growth. This is the approach adopted by the SoS in a number of decisions.

Social Benefits

Provision of Housing

- 7.10. The only social benefit identified by James Ryan is the delivery of 130 homes including 30% affordable homes.
- 7.11. The statement by James Ryan at 7.12 that the benefit of housing cannot be afforded significant weight when the Council currently has an adequately deliverable supply is incorrect. There is no further detail provided on this assertion, however, the statement conflicts with the July 2020 Secretary of State decision at Nantwich (APP/R0660/A/13/2197532 and APP/R0660/A/13/2197529) (CD 14.29). At paragraph 28 the Secretary of State finds that:

“28.For the reasons given in IR414 and IR420 the Secretary of State agrees with the Inspector that the delivery of significant numbers of market housing in a sustainable location is a significant benefit.

Whilst the Secretary of State has concluded that the Council can demonstrate a 5 YHLS, he has taken into account that nationally it is a government policy imperative to boost the supply of housing, as set out at paragraph 59 of the Framework, and he considers that this benefit should be afforded significant weight. (My emphasis).

- 7.12. The above conclusion was reached in the context of the LPA being able to demonstrate a five-year housing land supply of 5.7-6.6 years.
- 7.13. The Hamble-le-Rice appeal decision (CD 14.30) discussed earlier further confirms that “*given the national objective of significantly boosting the supply of homes, the provision of market and especially affordable housing carries significant weight*”, as the Inspector stated at paragraph 64 of the decision, even if an LPA’s housing land supply exceeds 5 years. In the Hamble-le-Rice appeal, the total number of homes proposed was fewer (up to 70 dwellings), the number of affordable homes fewer (up to 25 (35% of 70)), and LPA was able to demonstrate a greater housing land supply relative to its requirement (between 7.2 and 10 years) than in respect of the subject Appeal. Yet if the benefit of housing provision were still considered to attract significant weight.
- 7.14. It is therefore clear that the delivery of housing can and indeed should, in line of with paragraph 59 of the Framework, be given *at least* significant weight.
- 7.15. This is further supported by the findings of *Canterbury CC v SSHCLG* [2019] EWHC 1211 (Admin) (CD 14.5); which found that the benefits of housing did not cease to apply when a five-year supply could be demonstrated.
- 7.16. The delivery of 130 homes is clearly not an insignificant contribution towards housing provision and will provide 130 individuals or families with a home that would otherwise not exist. This is entirely consistent with government and indeed local policy objectives to meet housing needs and boost the supply of housing. The provision of housing should therefore at the very least hold significant weight in the planning balance.

- 7.17. In the case of the appeal proposals there are then additional considerations as set out in the evidence of Sam Hollingworth that further emphasise the need to support housing delivery. These include: the marginal position with regards to five-year housing supply; the fact that the five-year housing land supply is measured against a target which is significantly lower than the minimum current national policy now instructs Local Planning Authorities to use in order to contribute towards the objective to significantly boost housing land supply; the change in market conditions and affordability since the adopted housing requirement was determined; the worsening of affordability in Colchester despite adopted targets having been consistently met over a number of years (giving rise to concern that adopted targets do not reflect need); and the inability for adopted overall housing targets to facilitate the meeting of affordable housing needs in full (despite Ms Howick's subsequent admission in her proof of evidence that this was a desired outcome of the identified target).
- 7.18. At 7.11 James Ryan makes clear he has relied on the evidence of Beth Jones and Cristina Howick on the matters of market housing and affordable housing, and that he finds that 'convincing'. At 3.3 Cristina Howick argues that it is the Council's case that the standard method is irrelevant. This, as argument is adopted by Sam Hollingworth, and is incorrect. The standard method is clearly a material consideration, and whilst the weight to be attributed to it is likely to be a matter for debate, to suggest it is not a material consideration at all is considered to be a legally flawed approach to decision making. Given James Ryan relies on this evidence, his assessment of planning balance in relation to this issue, and hence to the application as a whole is also similarly incorrect.
- 7.19. In addition to all of the above considerations, the provision of housing in this location is furthermore not only in a sustainable location consistent with the Framework but also in this case is in a location specifically identified in the Section 2 Local Plan as appropriate for such development and where amendment of the settlement boundary has been identified as being required. The emerging development plan requires the delivery of a minimum of 400 homes within Tiptree. To reiterate, there would be a breach of policy if 400 is not reached, but no breach of policy should greater than 400 homes be provided. This adds further weight to the benefit of housing provision in this location.

Affordable housing

- 7.20. The benefit of the provision of 39 affordable homes (30%) is only considered in paragraphs 7.15 and 7.16 of James Ryan's proof of evidence, stating this only has limited weight as "it does no more than comply with required policy".
- 7.21. It is important to recognise that those in need or affordable housing are "**real people in real need now**", as the Inspector recognised in the Droitwich Spa appeal decision (CD 14.31).

- 7.22. As set out at 8.10 of my original proof of evidence, Colchester Borough Council's record on affordable housing delivery when compared with the identified need of 267 affordable dwellings per annum is severely lacking in terms of actual delivery. A cumulative shortfall against requirements now existing of over 1,000 homes (since 2013). 3,000 households on the Council's housing register, and as Sam Hollingworth notes in his rebuttal of Beth Jones' evidence, Colchester Borough Homes report that only around 20% of people on this list are expected to be successful in obtaining a home. At a human level this simply means that people's existing needs are not being met. The consideration of affordable housing and the evidence of Beth Jones is further considered by the evidence of Sam Hollingworth and I rely on that evidence. The scale of need is such that in this case it is considered that very substantial weight should be attributed to this benefits. As noted in the evidence of Sam Hollingworth, such a view is consistent to that taken in recent appeal decisions.
- 7.23. The social impact of this is extremely significant and has real impact on the lives of real people. Tiptree is identified in the Council's policies as a sustainable location for growth and therefore seeking to better provide for the borough's affordable housing needs in this location is entirely consistent with national planning policy and the objectives of the development plan.
- 7.24. The Council's current position in this regard, however, reflects a lack of appreciation of the importance of affordable housing to people's lives.
- 7.25. In his evidence on social benefits, James Ryan also refers to the alleged design failings of the scheme. These are not accepted by the appellant as made clear elsewhere in my evidence and that of David Plant. Notwithstanding this however the approach adopted by Mr Ryan is flawed in that at paragraphs 7.11 and 7.15 in particular it appears to seek to counter positive weight to be given to housing and affordable housing provision due to alleged design failings. The provision of housing and the quality of design are two separate matters in this appeal and should be considered in their own right in the planning balance. In my opinion the correct approach is to weigh up the proper weight to be given to the benefits of both housing provision in general, and the provision of affordable housing. Following this a similar exercise should be undertaken with regards to any negative impacts, and then finally a balancing exercise undertaken. To fail to give benefits of the scheme their proper weight in the balance due to alleged poor design is the incorrect approach, and does not represent a proper assessment of the planning balance.

Environmental benefits

7.26. The proof of evidence from James Ryan identifies Biodiversity Net Gain and planting as potential benefits. It is stated these are standard expectations. As per the Hamble-le-Rice appeal decision (CD 14.30) discussed earlier, benefits are benefits, regardless of whether they would also apply to another proposal. The further submissions made by the appellant on the 28th February included information on biodiversity net gain and tree canopy cover consistent with the emerging policy in the Section 2 Local Plan. This is further supported by a biodiversity net gain habitat areas plan produced by James Blake Associates (CD14.34). These two assessments demonstrate that the appeal scheme will not only meet, but will significantly exceed these policy requirements. These are assessed in my evidence as significant benefits of the scheme. It is accepted that James Ryan’s evidence may have been written prior to consideration of this new information and we understand an addendum is to be provided. Notwithstanding this it is clearly essential that the planning balance assessment is updated to properly reflect these issues.

Failure to identify other relevant considerations

7.27. The assessment of planning balance by James Ryan fails to identify numerous other benefits and issues identified in my analysis. The weighting applied to the issues also similarly varies. I have provided a summary of the position below.

Material Consideration	James Firth (Savills)	James Ryan (CBC)
Benefits		
Provision of Affordable Housing (social benefit)	Very Substantial weight	Limited weight
Provision of 130 homes (social benefit)	Very Substantial weight	‘Cannot be afforded significant weight’
Biodiversity Net Gain (environmental benefit) –	Significant weight	Little weight (potential update required in light of revised material)
Contribution to the economy (economic benefit)	Significant weight	Moderate weight
Sustainable Location consistent with settlement hierarchy (social and environmental benefit)	Moderate weight	Not referenced / considered in planning balance
Optimisation and efficient use of land (social and environmental benefit)	Moderate weight	Not referenced / considered in planning balance

Rebuttal Proof of Evidence – James Firth

APP/A1530/W/21/3278575

Tree canopy (environmental benefit)	Moderate weight	Little weight (potential update required in light of revised material)
Connectivity improvements (social benefit)	Moderate weight	Not referenced / considered in planning balance
Bespoke Design (social, environmental and economic benefit)	Limited weight	Not referenced / considered as a positive in planning balance
Safeguarding route for a potential road link / wider connectivity (social, environmental and economic benefit)	Limited weight	Not referenced / considered in planning balance
Off-site environmental mitigation / Recreational Avoidance Mitigation Strategy (environmental benefit)	Limited weight	Not referenced / considered in planning balance
NPPF (Revised 2021)	Significant weight in favour (consistent with the Framework taken as a whole)	N/A (see adverse impacts table below)
Adverse impacts		
Conflict with of the Development Plan (social, environmental and economic)	Moderate weight (conflict with parts of development plan, but consistent with others)	Significant weight (most important policies up to date and significant weight to breaches of these).
Harm to the landscape as a result of the development (environmental)	Moderate weight	Not referenced / considered in planning balance
Impacts on the highway network (social, environmental and economic)	Moderate weight	Not referenced / considered in planning balance
Impacts on local infrastructure (social, environmental and economic)	Moderate weight	Not referenced / considered in planning balance
Conflict with the existing employment allocation (economic)	Limited weight	Not referenced / considered in planning balance
Conflict with existing gypsy and traveller allocation (social and environmental)	Limited weight	Not referenced / considered in planning balance
Impact on the emerging Neighbourhood Plan (social, environmental and economic)	Limited weight	No weight to the Neighbourhood Plan



Alleged breaches of Policy DM15	N/A	Significant weight
'Harm from not creating a high quality place'	N/A	'Much greater weight than the limited benefits'
NPPF (Revised 2021)	N/A (see benefits table above)	Significant weight (not sustainable development para 11, as not a high quality scheme and not beautiful)