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

Rebuttal Proof of Evidence

Sam Hollingworth 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 Ms Howick's PoE in respect of appeal APP/A1530/W/21/3278575, and in relation to housing need.

2. Consideration of Ms Howick's PoE

- 2.1 Ms Howick's Proof of Evidence (PoE) March 2022 asserts that the Local Housing Need, calculated in accordance with current national policy and guidance using the Standard Method, for Colchester is of "*no relevance*" to the consideration of the Appeal.
- 2.2 This is simply not a credible position to take, for the reasons discussed here.
- 2.3 Ms Howick explains that the housing requirement set by the current Development Plan was that based on the Objectively Assessed Housing Needs Study (OAHNS) 2016, that this was prepared in the context of "*an earlier version*" of the PPG, and that it formed part of a Local Plan that examined in relation to the 2012 NPPF and the then-current NPPF's transitional arrangements. None of this is disputed (although it should be pointed out that the "*earlier version of the PPG*" actually related to the PPG that accompanied the NPPF 2012 and which set out a fundamentally different approach to calculating housing requirements than current national policy).
- 2.4 Whilst the figure of 920dpa is of course the adopted Development Plan requirement, and is the appropriate figure for determining the housing land supply position and whether the 'tilted balance' as per NPPF paragraph 11d) is engaged, it is nevertheless pertinent to note:
- The OAHNS 2016 is now some 6 years old, and data it relied upon older still;
 - Market signals are now very different to those at the time the OAHNS 2016 was prepared, and on which the decision not to apply a market signals uplift to the housing requirement was based (as Ms Howick's PoE confirms);
 - National policy has subsequently in relation to how housing requirements should be determined has subsequently changed. As Ms Howick notes in her PoE at paragraph 2.34, current national policy and the use of the Standard Method is a policy-led approach aimed at delivering higher numbers in total;
 - Since 2013, Colchester has consistently exceeded the minimum housing required in the adopted Development Plan. The strong record of delivery against adopted targets in Colchester enables a 'real world' test of whether they are meeting actual needs. Over this time, affordability has continued to worsen and at a greater rate than the national average; and the provision of affordable housing has been significantly below identified needs.
- 2.5 Separately, and also relevant to the weight to be attributed to the provision of additional housing beyond the minimum Development Plan requirements, I note that Ms Howick asserts that in preparing the OAHNS 2016 the North Essex Authorities (NEAs) considered "*there was a good prospect that if the objectively assessed needs were met in full the area's affordable need would*

also be met in full. Therefore they did not increase the housing figure in the strategic plan to help deliver the required number of affordable homes”.

- 2.6 This provides an interesting insight into the genesis of the Development Plan’s housing requirement, and the aspirations of the requirements set, particularly in retrospect. Given that an objective of the NEAs’ housing requirement was to meet affordable housing needs in full, then it is patently failing, as demonstrated in my PoE. Ms Howick’s evidence also implies that if the NEAs had felt that the housing requirement set would not meet affordable housing need in full, then they may have been minded to increase the housing requirement from that ultimately adopted (i.e. to a level that would meet affordable housing needs in full).
- 2.7 In addition, Ms Howick’s PoE confirms that the housing requirements in the OAHNS 2016 were informed by estimates of migration from London to the NEAs, including Colchester. The OAHNS 2016 recognised that there was a strong relationship between the North Essex housing market area (‘the HMA’), in which Colchester sits, and London. Indeed, at paragraphs 2.7 – 2.9. the OAHNS 2016 it states that, other than Maldon District and between the North Essex Authorities themselves, the HMA’s strongest links are with London.
- 2.8 In this regard, it is pertinent to note that between 2016 and 2019 (the latest figures for which the London Plan Annual Monitoring Report provides data) housing completions in London amounted to a shortfall 15,530 against expected delivery.¹
- 2.9 Furthermore, it is now clear that even if London’s housing targets are met in full, it will still amount to a vast shortfall against need. In the preparation of the London Plan, a housing requirement of c.66,000dpa was identified. The publication version of the London Plan proposed a supply of c.65,000dpa – a shortfall of c.1,000dpa. This is in itself a significant shortfall. However, the Inspectors’ Report on the London Plan, published in October 2019, confirms that the contribution from small sites had been significantly overestimated. The London Plan’s supply of new homes was reduced down to c.52,000 accordingly, and a revised target set in the adopted version of the London Plan on this basis. As such, even if the London Plan’s housing targets were met in full, this would still amount to a shortfall of c.140,000 new homes between 2018 and 2028. By way of context, this scale of shortfall over a mere 10 years represents more homes than there are in total in cities of the size of Reading, Kingston-upon-Hull, or Derby. It is also relevant to note that there is no regional framework in place to try and address this matter through a plan-led process. The scale of shortfall was not known at the time of the OAHNS 2016, but clearly this has huge potential implications for housing markets that have a relationship with London, placing

¹ Table 3.4 of London Plan Annual Monitoring Report 16 2018/19 (March 2021)
https://www.london.gov.uk/sites/default/files/amr_16_final.pdf

considerable extra pressure on them. Such housing market include Colchester's, as the OAHNS 2016 confirms.

- 2.10 Separately, and in addition, there is the potential impact of the 'race for space' on the Borough's housing market. Whilst the longer term impact on housing demand resulting from the Covid-19 pandemic has yet to be realised, early indications are that there has already been an increased desire to move from more to less urban areas. This has been driven by what has been dubbed the 'race for space' – the desire for homes with larger garden areas and home offices, better access to open space, and within less densely populated areas. This has obvious implications for Colchester (as well as many other areas outside of, but with a relationship to, and within commuting distance of, London). Whilst affordability was already worsening in Colchester Borough before the pandemic, this is another factor that has the potential to put yet more pressure on Colchester's housing market.
- 2.11 None of the above factors change how the five-year housing land supply position is to be calculated for the purposes of determining whether the 'tilted balance' as per NPPF paragraph 11d) is engaged. Nevertheless, they are material considerations – to suggest otherwise would simply be irrational. It would reduce consideration of housing need / supply down to a merely academic exercise, and to ignore the real world objectives of planning to meet housing needs, the rationale for the introduction and use of the Standard Method – and the consequences of failing to meet need against a continued policy exhortation to boost significantly the supply of housing.
- 2.12 As noted in my PoE, neighbouring Chelmsford City Council has recognised that simply because it is able to demonstrate an NPPF-compliant five-year housing land supply (also against a 2012 NPPF Local Plan requirement), and a strong Housing Delivery Test measurement, does not mean sufficient homes to meet needs in the real world are necessarily being delivered.
- 2.13 For any LPA to simply dismiss any other evidence of housing needs out of hand, merely because of its purported five-year housing land supply position and / or Housing Delivery Test measurement would represent a very disconcerting and cavalier approach to ensuring the housing needs of its communities are met.
- 2.14 Furthermore, it would go against well established principles that decision-makers cannot blindly following existing policies without considering the particulars of a specific case, and considering the implications of the application of policies. In *Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council* [2016] EWCA Civ 441, for example, it was noted that:

“The rule against fettering discretion is a general principle of the common law. It is critical to lawful public decision-making, since without it decisions would be liable to be unfair (through failing to have regard to what affected persons had to say) or unreasonable (through failing to have regard to relevant factors) or both”

2.15 Ms Howick opines at paragraphs 3.9 and 3.10 of her PoE that:

“If the government had wanted authorities like Colchester to plan for housing in line with the standard method, it would have made different transitional arrangements.

“Again, this confirms that the standard method should have no impact on the outcome of this appeal – in accordance with national policy”.

2.16 It is important not to confuse plan-making with the consideration of specific planning applications. The NPPF provides transitional arrangements for the preparation of Local Plans. This allowed for the Colchester Section 1 Local Plan to proceed to adoption despite its 2012 NPPF approach to calculating housing requirements. However, there is nothing within national policy to suggest that this means local housing needs calculated in accordance with current national policy are immaterial.

2.17 The NPPF confirms that its policies are a material consideration:

“The policies in this Framework are material considerations which should be taken into account in dealing with applications from the day of its publication.”²

2.18 I therefore am firmly of the view that the NPPF’s exhortation to boost housing land supply, and the use of the Standard Method to help achieve this, is a material consideration.

2.19 At paragraph 3.5 of her PoE, Ms Howick acknowledges *“depending on the circumstances, it might be argued that it [local housing need calculated using the Standard Method] impacts indirectly on development management decisions, by suggesting that the benefit of additional housing provision might weigh heavier in the planning balance than current policies suggest”.*

2.20 However, Ms Howick suggests there are two reasons why in Colchester’s case there is no such impact:

- that the next Local Plan review is four years away; and

² NPPF Paragraph 218

- the difference between the two housing figures (that derived from current national policy, and that in the adopted Development Plan) is 'modest'.

2.21 Looking at each of these in turn, and firstly in respect of review of the Local Plan being four years away, reliance on this argument is wholly misplaced, for the following reasons.

2.22 Firstly, it is not necessarily the case that a Local Plan review is four year away. The NPPF requires strategic policies to be reviewed **at least** once every five years. The NPPF makes clear the specific importance of ensuring Local Plans are update to reflect changes in housing needs, stating Plans "*are likely to require earlier review if local housing need is expected to change significantly in the near future*"³.

2.23 Even if one were to disregard the NPPF and its call to review Local Plans in under five years where there has been a significant change in housing need, Policy SP4 of the Colchester Local Plan Section 1 in any case expressly states:

*"The authorities will review their housing requirements **regularly** in accordance with national policy requirements, and in doing so will have regard to the housing needs of the wider area".*
(Emphasis added).

2.24 Notably, the above requirement was inserted as a main modification, i.e. it was deemed necessary to insert this element of policy in order to make the submitted Local Plan sound. Such a modification would not be necessary if it was considered appropriate to simply rely on a review within 5 years as per legal requirements / NPPF, as confirmed through the examination of other Local Plans elsewhere⁴.

2.25 It is also relevant to note that the NPPF requires reviews to be *completed* no later than five years from the adoption date of the Plan. In terms of how long preparation of a Local Plan can take, nearly five years have elapsed since Colchester Borough Council's current Development Plan was submitted. Yet, at the time of writing, it is still not fully adopted. To ensure that a Local Plan review can be completed in a timely fashion, ideally it would have begun already. Calculation of the housing requirement for the Borough in the new Local Plan will of course be key in the iterative preparation of a new Local Plan, and will doubtless inform issues and options to be considered

³ NPPF Paragraph 33

⁴ For example, at paragraph 153 of the Report on the Examination of the New Castle Point Local Plan 3 March 2022 in which the Inspector concluded: "*It has been argued that the Plan should be subject to a requirement for a prompt review. However, given the extent of the housing and employment land supply which is provided by the Plan, and the legal requirement for Local Plan Policies to be reviewed to assess whether they need updating at least once every five years...amending the Plan to require its early review is not necessary to make it sound.*"

at an early stage. As such, one would expect work to inform a housing requirement (including consideration of the housing needs for different groups in the community, as per the NPPF) to be undertaken when the new Local Plan is still in embryonic form. It is not something that can be left until later stages in the Local Plan's preparation, let alone left until its adoption.

- 2.26 Furthermore, and perhaps of greatest relevance in respect of this point, there is nothing to suggest that decision-makers may disregard the NPPF until such time as the Development Plan is reviewed. On the contrary, the NPPF expressly confirms that it is a material consideration from the date of its publication, as discussed above.
- 2.27 Calculation of local housing need using the Standard Method is not only relevant in plan-making. This is confirmed by the fact that the NPPF directs use of the local housing need calculated in accordance with the Standard Method in determining LPAs' housing land supply positions in the event relevant strategic policies are more than five years old.
- 2.28 Even if one were to disregard all of the above, to purposely proceed on the basis that the Development Plan's housing requirement is an absolute – to disregard the material change in circumstances since it was established, its failure to improve affordability, its failure to facilitate the meeting of affordable housing needs in full, and the fact it set a substantially lower requirement than current national policy suggests should be the minimum for the Borough – without giving *any* weight to the benefits of providing more homes (and to instead wait until the Development Plan is reviewed) would be patently irrational. Such a stance in this context would amount to purposefully allowing housing needs to go unmet. Neither the Development Plan (which confirms the total housing requirement of the plan period is a minimum) nor the NPPF support such a stance.
- 2.29 Turning to the suggestion that the difference between the figure derived from the Standard Method and that in the Development Plan is only 'modest', and therefore is irrelevant, I strongly disagree with this position.
- 2.30 Firstly, if the difference between the two were immaterial, it begs the question as to why the Council would vociferously reject consideration of a measurement of its housing land supply against the Standard Method requirement.
- 2.31 Secondly, and more importantly, it should be noted that the difference between the Standard Method minimum figure (1,061dpa) and the Development Plan requirement (920dpa) amounts to 141dpa – a similar scale of housing as that proposed by the subject Appeal, each and every year. Again, it should be remembered that the provision of housing is not simply an academic exercise – it is something that has real world consequences. I do not consider that the provision of 141 more homes per year could be considered insignificant. A shortfall of 141 homes *per year*

against local housing need patently *is* significant; not least to the 141 households per year who could have benefitted from such provision. Since my original PoE, ONS has released an updated dataset on price to workplace-based earnings ratio. This shows that the latest (2021) affordability ratio for Colchester is 10.38 (a substantial increase on 2020's ratio of 9.58). This results in a local housing need as per the Standard Method of 1,101 dpa – 181dpa more than the adopted requirement in absolute terms, and 20% more in relative terms

- 2.32 The consequences of dismissing the difference between the two figures becomes particularly problematic if no consideration were to be given to this until 2026, as Ms Howick's PoE implies should / will be the case. This would simply allow for a shortfall to build-up over time, and mean that housing needs were going unmet for longer.
- 2.33 Linked to Ms Howick's suggestion that the housing requirement derived from the Standard Method is irrelevant until the Local Plan review, Ms Howick goes on to suggest a number of other reasons why it is immaterial to this appeal.
- 2.34 Ms Howick asserts that "*national policy and guidance are very likely to change*" ahead of a Local Plan review. As already discussed, it is not appropriate to simply disregard evidence of housing need until a Local Plan review, nor it is the case that the Council should wait four years before embarking on a review. But putting these factors to one side, one can only speculate as to whether or not national policy and guidance will change, and – if they were to change – in what way. Ms Howick refers to the Government planning White Paper, published in August 2020 proposing long-term fundamental changes to England's planning system, including a new method for setting housing targets. However, subsequently the Government has made it clear that such changes to the Standard Method it proposed in August 2020 are unlikely to materialise; and that instead it will instead be retaining the Standard Method in its current form in order to "*provide stability and certainty for plan-making and decision-taking*"⁵.
- 2.35 Speculation as to whether or not national policy might change in the future is unhelpful in the consideration of this Appeal – this Appeal can only be considered in relation to policies and other material considerations that are in place now. Notably, if one were to disagree, the proposed changes to the Standard Method suggested back in August 2020 would have resulted in a minimum local housing need for Colchester of over 1,600dpa.
- 2.36 Ms Howick also points to the fact that by 2026, the 2014-based SNHP which are utilised by the Standard Method will be considerably out-of-date. This may be the case, but it is irrelevant to

⁵ Government response to the local housing need proposals in 'Changes to the current planning system' (Updated 1 April 2021) <https://www.gov.uk/government/consultations/changes-to-the-current-planning-system/outcome/government-response-to-the-local-housing-need-proposals-in-changes-to-the-current-planning-system>

the current calculation of minimum housing requirements in accordance with current national policy, and the projections such policies currently instruct one to use in doing so.

- 2.37 Ms Howick also suggests that the affordability ratio in Colchester may improve. It might. Or it might not. The key point is that at this present point in time, it is clear that affordability in Colchester has significantly worsened in recent years. Between 2013 and 2021 Colchester's median affordability ratio rose from 7.41 to 10.38 – an increase of 40%. The affordability of housing has significantly worsened in Colchester over a sustained period of time, and the ratio has increased each and every year between 2009 and 2021, with one exception (in 2019 after which it rose again)⁶.
- 2.38 Notably, the consistent and significant worsening of affordability in the Borough has occurred over a time in which the Council consistently met its housing targets (Ms Jones, in her PoE, states that the Council has consistently met its housing targets since the start of the plan period (2013) (and indeed did so for a number of years before the start of the plan period)). I see no reason to be optimistic that housing affordability will improve in Colchester if the Council continues to seek to achieve 920dpa. The evidence to date suggests the opposite is far more likely.
- 2.39 Given that affordability has consistently worsened despite levels of housing delivery being above the requirements set by the Local Plan, meaningful improvements to housing affordability appear unlikely unless decision makers are minded to take a positive approach to proposals for housing that will help significantly boost housing supply beyond merely the minimum requirements.
- 2.40 Ms Howick also suggests that the Local Plan review for Colchester may set a housing requirement which is lower than that derived from the Standard Method, if housing supply is constrained by factors recognised by the NPPF; or a greater housing requirement, if Colchester accommodates unmet need from neighbouring areas.
- 2.41 I agree with Ms Howick that it is not the purpose of this Appeal to pre-empt what a future Local Plan review might do, though I note that Colchester is not subject to significant constraints that the NPPF suggests might necessitate setting a housing requirement below that suggested by the Standard Method. It does not contain any Green Belt, for example. Notably, much of Essex is constrained by Green Belt. Green Belt Authorities within the County may well be looking to non-Green Belt Authorities such as Colchester to assist in meeting housing needs. Moreover, insofar as is relevant for this Appeal, the Appeal site is not subject to such constraints as the NPPF suggests may limit residential development (i.e. the constraints identified in footnote 7 of the

⁶ ONS Ratio of house price to workplace-based earnings (lower quartile and median), 1997 to 2021 (March 2022)

NPPF). If there are concerns that such constraints may limit the potential for housing needs to be met (either within the Borough itself or within neighbouring areas) then this simply underlines the importance of utilising suitable sites which are not subject to such constraints (such as the Appeal site) to help meet needs.

- 2.42 At paragraph 3.7, Ms Howick appears to imply that Colchester can address current housing issues by producing a new Local Plan in 2026 that provides for 15% more housing, and suggests that it should not need to rely on speculative proposals ahead of such a review. Two points I would make in respect of this. Firstly, I disagree entirely that, where there is evidence of housing needs going unmet, it is appropriate to delay taking action to address this. There is nothing within the NPPF or PPG to support allowing such needs to go unmet, and the negative social and economic impacts of failing to address such issues are very clear. If the Local Plan review were indeed not take place until 2026, there is a significant risk that a substantial housing shortfall will have built up in the meantime. Again, it is important to remember that meeting housing needs is not an academic exercise – failure to deliver sufficient homes has the potential to have very significant, negative, real world consequences.
- 2.43 Secondly, this view appears to overlook that the Appeal relates to Tiptree and, whilst the emerging Colchester Local Plan Section 2 directs a minimum of 400 additional homes to be delivered for Tiptree, it does not allocate any sites to achieve this. Instead it proposes that the Tiptree Neighbourhood Plan will do this. Neither the current nor the emerging Development Plan allocates sites to deliver additional housing in Tiptree. As set out in the evidence of James Firth, there are doubts as to when – or even if at all – a Tiptree Neighbourhood Plan will become made.
- 2.44 In overview, having read Ms Howick's PoE, I remain of the view that the housing land supply position when considered against the local housing need calculated in accordance with current national policy (the Standard Method) is still material to this Appeal.
- 2.45 Indeed, Ms Howick's admission that the housing requirement set by the Development Plan was at least in part predicated on the views of the NEAs that this requirement would meet affordable housing needs in full (when clearly it is failing to do so) reaffirms my view that the housing supply position measured against such a target should not be considered uncritically.
- 2.46 Ultimately, even if one were to disregard the housing requirement the Standard Method suggests for Colchester, the change in circumstances since the housing requirement in the Development Plan was established – and how successful such a target has been in addressing needs – is still very much a material consideration.
- 2.47 In this respect, despite being consistently met since the start of the plan period in 2013, delivery of housing at a level suggested by the Development Plan has not brought about improvements

in affordability. Instead they have worsened, and at a greater rate than the national average. Average house prices and rental costs have continued to rise, again at a rate greater than the national average. In addition, a substantial affordable housing shortfall has built up since 2013.

- 2.48 Having regard to all of the above, I remain of the view that the Appeal's provision of housing – including affordable housing – represents a significant benefit that should attract very substantial weight in the Appeal's favour.