

ADDENDUM DELEGATED REPORT FOR APPLICATION REF: 202604**Site Address: Land at Brook Meadows, Tiptree, Colchester, CO5 0QF****Case Officer's Report:**The Scope of This Report

This delegated report must be read as an addendum to the previous delegated report that was signed off by the Development Manager using delegated powers on the 9.5.2022. The scheme was refused for a number of reasons and is currently at appeal APP/A1530/W/22/3301862. The Public Inquiry sits from the 25th October 2022 onwards.

Please refer to the main delegated report for site description, consultee comments and all other matters.

This addendum delegated report deals with the matter of the Emerging Tiptree Neighbourhood Plan only and will consider the implications of that.

This officer's delegated report will be read and if agreed, will be signed off by the Development Manager in order to confirm the authority to pursue the additional putative reason for refusal set out at the end of the report.

Introduction

Following the closure of the Regulation 16 consultation period for the eTNP on 12 October 2022, officers consider that the appeal scheme is prejudicial to the eTNP plan process and premature, and that the Council would have adopted a RfR on grounds of Prematurity had the application fallen for determination following closure of that consultation period. It provides the assessment for the Council's case in respect of this matter, drawing on the consultation representations (published in full on 15 October 2022). These are available to view on the Consultation Portal ([link](#)).

It will look at:

- High level summary and overview of the representations to the Regulation 16 eTNP;
- How granting planning permission would prejudice the outcome of the plan-making process;
- Conclusion

Representations to The Emerging Tiptree Neighbourhood Plan (eTNP)

Following the close of the Regulation 16 consultation a total of 800 representations (plus 40+ thought to be duplicate representations) have been received to TNP. Of

those 763 support the Plan or specific policies within it. A further 62 make general comments and the remaining 19 are objections to various policies or chapters or the Plan as a whole. Only those points relevant to the appeal made in the representations listed are referred to below.

- *Representation on behalf of the Appellant* raising objections to;
 - Plan Compliance with the Basic Conditions
 - Object to Policy TiP13 in respect of Brook Meadow and its designation as a Local Green Space. Consider this is not justified or properly evidenced. The designation should therefore be removed;
 - Consider that there are flaws with the SEA process and content;
 - Consider that there are flaws with the HRA content and process;
 - Consider that the site selection process for the site allocations is flawed, not properly evidenced, and risks the failure of the neighbourhood plan if not rectified;
 - The sites allocated (TiP15 and TiP16) have been identified as having constraints and uncertainties in relation to deliverability;
 - The site at Brook Meadow (appeal site) is a candidate site for allocation which is fully supported by the evidence base to the TNP save for ecology and nature conservation and there is no evidence supporting the proposition that there will be any harm to the LWS;
 - The plan does not meet the Basic Conditions.
- *Representation on behalf of Mersea Homes and landowners (Site Promoters for sites proposed for allocation in the TNP).* Indicating support as follows;
 - Support for the Spatial Strategy TiP01 and the supporting evidence and consideration of reasonable alternatives through the SEA and other evidence;
 - Support Allocation Policies TiP15 and TiP16 and as representatives on behalf of the landowners and developers for the allocated sites restate that the proposed allocations are deliverable and viable.
- *Representation from Edward Gittins Associates* raising objections as follows;
 - The Spatial Strategy as it is unchanged from earlier plan and not adequately justified;
 - The Settlement Boundary as drawn claiming omissions of sites and land already developed for residential and commercial development (site areas referenced are not associated with the appeal site);
 - The plan does not meet the Basic Conditions
- *Representation from Natural England* indicating support for the Plan as a whole and specifically;
 - welcomes the amendments made to the Plan's text and policies in response to previous representations at Regulation 14.

- The revised Plan now provides a more extensive consideration of the value of existing and future green infrastructure provision within the Plan area and the addition of new policies relating to “Landscape & Biodiversity” (TiP12) and “Local Green Spaces” (TiP13) is also welcomed.
- *Representation on behalf of Colchester United Football Club* raising objections as follows;
 - The exclusion of Florence Park (open space / sports facility) from the settlement boundary is not justified, nor is it based on any available technical assessment, related evidence or good planning reason. (site area referenced is not associated with the appeal site);
 - exclusion of Florence Park from the settlement boundary has the direct effect of removing the principle in favour of this site being redeveloped for a mixed housing and community sports scheme as part of a purpose planned development and investment strategy;
 - The plan does not meet the Basic Conditions
- *Representation from Colchester Borough Council* indicating support for the Plan and comments on specific policies;
 - Confirms the Plan is compliant with the relevant Strategic Policies and SS14 in the Colchester Local Plan;
 - Support for the Spatial Strategy (TiP01) and the evidence and justification supporting it;
 - Support Policy TiP13 and the designation of the Local Green Spaces (including the appeal site) and confirm that the evidence supporting this complies with Paragraph 100 of the NPPF;
 - Support Policies TiP15 and TiP16 – the proposed allocations and the evidence supporting them including evidence regarding deliverability;
- *Representation from Essex County Council* indicating general support and comments on specific policies;
 - ECC acknowledges and welcomes the changes made since the last version of the Plan, many of which respond to previous representations.
 - Non-substantive comments on a number of policies which do not directly relate to this appeal
- *Representation from National Highways* - indicating support and comments on specific policies;
 - Confirm no objections to the TNP and provides supporting comments in respect of the transport elements specifically.

The Implications ie. How granting planning permission would prejudice the outcome of the plan-making process

Policy TiP13: Local Green Space

The policy in the eTNP which is of most direct relevance to the current appeal is **Policy TiP13 Local Green Space** since the Policy designates the appeal site as one of 7 designated as a Local Green Space in accordance with paragraph 100 of the NPPF. The Local Green Space designation is identified in the eTNP as the largest area of open grassland within the parish, highly valued both for wildlife and recreation. The TNP refers to evidence from the community highlighting the site to be the most valued area for recreation within the parish as one of the only large areas of accessible open space within the parish. It makes the point that as the population in Tiptree increases, areas such as this become increasingly important, particularly in the context of the need to mitigate potential impacts on sensitive areas such as the Essex Coast from recreational disturbance, in accordance with the RAMs policy.

This Policy has clearly evidenced positive intentions for the Appeal site, which are inconsistent with and contrary to the appeal proposal for residential development. There are 41 representations to this policy which includes 40 representations of support or comment primarily from the local community; support from Natural England; and 1 representation of objection on behalf of the appellants. This means that the forthcoming TNP Examination will consider the merits of the proposed designation for this site as a Local Green Space, the evidence supporting it and the representations received. Granting planning permission for the proposed development would be inconsistent with designation of the appeal site as a Local Green Space and would therefore preclude its protection and enjoyment as such. The grant of planning permission would therefore prejudice determination of the merits of the site's proposed designation as a Local Green Space through the plan-making process, i.e., the TNP Examination. For this reason, the grant of planning permission would be premature to the plan-making process within para 50 of the Framework

Policies Tip01, 15 and 16

Policy TiP01 sets out the Spatial Strategy for Tiptree with overarching guiding principles regarding the location of development. The appeal proposal is contrary to this policy. There are 33 representations to this policy including 31 support (or comment) which includes National Highways, and 2 objections. The objections include representations, on behalf of Colchester United Football Club, and Edward Gittins Associates. Collectively, these representations question the appropriateness of the spatial strategy, the evidence which has informed it and the SEA supporting the plan and the consideration of alternatives for the spatial strategy. This means that the forthcoming TNP Examination will consider the merits of the proposed spatial strategy, the evidence supporting it and the representations received. It is

officers' opinion that granting planning permission for the appeal proposal would prejudice the ability to deliver the level of additional housing development that the Section 2 Colchester Local Plan confirms to be appropriate overall for Tiptree over the plan period (600) in accordance, importantly, with the chosen TNP spatial strategy. It would also therefore prejudice delivery of the benefits of that strategy. For these reasons also, therefore, the grant of planning permission would be premature within para 50.

Policies **TiP15 and Tip16** in the TNP are the allocation policies for the two sites proposed to meet the housing requirement, to which Policy TiP01 refers. There are representations to both of these policies as follows.

TiP15: Highland Nursery, has attracted 35 representations of which 34 are support / comment including from Anglian Water, Essex County Council and Mersea Homes. The 1 representation of objection is from the appellant. The objection is on the grounds of constraints and uncertainties in relation to deliverability and particular uncertainty regarding the ability of the proposed road being delivered.

TiP16: Elms Farm has attracted 36 representations 34 of which are support / comment including support from Anglian Water, Essex County Council and Mersea Homes. The 2 representations of objection are from the appellant and a local resident. The appellant's grounds for the objection again concern the constraints and uncertainties in relation to deliverability and particular uncertainty regarding the ability of the proposed road being delivered. The resident raising concerns about the road Infrastructure towards the neighbouring settlement of Messing.

The grant of planning permission would prejudice the process of determining whether TNP should go to referendum including these proposed allocations because it would undermine or remove the requirement to maintain either or both of these allocations in order to allocate sites for a minimum of 400 further dwellings in order to make up the total of 600 additional dwellings that the Section 2 Local Plan confirms to be an appropriate level of growth for Tiptree through the plan period. The grant of planning permission would therefore be premature for this reason also having regard to para 50 of the Framework.

Other Representations

Three representations to the TNP Regulation 16 consultation, including the appellant raise matters concerning process and compliance and claim that the TNP as submitted does not meet the Basic Conditions. Upon submission of a NHP under Regulation 15, it is for the Local Planning Authority to make a judgement as to whether it considers the submitted Plan meets the Basic Conditions. Only then, should it proceed to the publication consultation under Regulation 16. In the case of the eTNP, officers are of the opinion that the Plan as submitted does meet the Basic Conditions.

This will now be a matter for the Examination, with the opportunity for the examiner to confirm whether the Basic Conditions have been met. It also provides the opportunity for the Examiner to recommend modifications to the Plan to address any matters if required to address any shortcomings in respect of the Basic Conditions if appropriate.

It is also of note that none of the representations have claimed that the eTNP should not proceed to Examination. The appellant concludes the representation at paragraph 3.56 that *“Our submissions have been made in order to assist the process, to identify where we consider there are deficiencies (some of which are of a legal nature, others a failure to meet the Basic Conditions) so as to allow at this early stage a review of neighbourhood planning for Tiptree so as to ensure that at the point at which the emerging neighbourhood plan proceeds it is fit for purpose and capable of being positively examined.”* Whilst officers do not agree the stage is “early” in the process (underlining added) this suggests the appellant is of the view that albeit with some review it could be made to meet the Basic Conditions. These matters together with other issues as relevant will be thoroughly addressed as part of the examination.

Conclusion

It is clear that that the appeal proposal is contrary to a number of policies in the eTNP which is itself a material consideration. Since the Decision Notice was issued on 10/05/2022 and the main evidence to the ongoing appeal was submitted, circumstances have materially changed in respect of the stage of progress of the eTNP. Now that the publication period has ended and the Representations have been received and reviewed, there is a clear requirement, in officers view, for an additional putative RfR on grounds of Prematurity. As an emerging Neighbourhood Plan which has reached the end of the publicity period (in accordance with paragraph 50 of the NPPF) the grant of planning permission for the appeal proposal is considered to prejudice the outcome of the plan-making process. As set out above the grant of planning permission would be clearly prejudicial to the plan-making process and therefore also clearly premature.

As set out above, it is clear that the appeal scheme is premature. Due to the material change in circumstance as detailed above, a putative additional reason for refusal is set out below.

Putative Additional Reason for Refusal:

Recommended Decision

Application Number: 202604

Description: Outline application for the erection of up to 221 dwellings and associated infrastructure and works

Address: Land at, Brook Meadows, Tiptree, Colchester, CO5 0QF

Reason(s) for Refusal

1. Following the closure of the Regulation 16 consultation period for the emerging Tiptree Neighborhood Plan (eTNP) on 12 October 2022 the eTNP can be given significant weight, in the context of Paragraph 50 of the NPPF resulting in the grant of planning permission is premature.

Granting planning permission for the proposed development would, first, be inconsistent with the proposed designation of the application site as a Local Green Space (LGS) at eTNP Policy TiP13 and preclude its protection and enjoyment as such; it would therefore prejudice determination of the merits of the site's proposed designation as a LGS through the eTNP process. It would, secondly, prejudice the ability to deliver the appropriate level of development for Tiptree over the plan period in accordance with the chosen eTNP spatial strategy (Policy TiP1), and delivery of the benefits of that strategy. It would, thirdly, prejudice the process of determining whether eTNP should go to referendum including the allocations at Policies TiP15 and 16 because it would undermine or remove the requirement to maintain either or both of these allocations to provide for the level of growth appropriate for Tiptree over the plan period. The grant of planning permission would therefore be premature in the context of paragraph 50 of the NPPF.

Case Officer's Initials and Date: JXR 18.10.2022	Authorising Officer's Initials and Date: SJC 18.10.22
---	--