

# HUTCHINSONS

Planning & Development Consultants

Town and Country Planning Act 1990

**Appeal by Taylor Wimpey UK Limited**

**Land at Broadfields, Elmstead Road, Wivenhoe,  
Colchester, CO7 9SF**

**STATEMENT OF CASE**

**OF**

**COLCHESTER BOROUGH COUNCIL**

**PINs Ref: APP/A1530/W/22/3305697**

**LPA Ref: 210965**

**October 2022**

**HUTCHINSONS**

15 Castle Gardens, Kimbolton, Cambridgeshire. PE28 0JE

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## 1 INTRODUCTION

1.1 This inquiry is in relation to an application for full planning permission for the construction of residential development, access, landscaping, public open space, and associated infrastructure works on land at Broadfields, Wivenhoe, Colchester

1.2 The application was submitted on 26 March 2021

1.3 The application was accompanied by detailed plans and supporting documents and it is anticipated that a full list of submitted documents and plans will be contained in an agreed Statement of Common Ground.

1.4 The application was subject to extensive consultations which raised a number of concerns. Objections were received from Wivenhoe Parish Council and third parties. No objections were received from technical consultees. The consultation responses are summarised in the Officer's Report to Committee and copies of the consultation responses have been enclosed with the Council's questionnaire response for this appeal and are available on the Council's website.

1.5 The application was referred to Colchester Borough Council's Planning Committee on 9 June 2022 with a recommendation of approval. The Committee Resolved to refuse the application for the following reasons:

- 1. Colchester Borough Council's current statutory development plan consists of the Core Strategy (adopted in 2008 and subject to a Focused Review in 2014), Site Allocations DPD (adopted 2010), Development Policies DPD (adopted 2008 and reviewed 2014), Section 1 of the new Local Plan (adopted 2021) and the Wivenhoe Neighbourhood Plan (2019). The proposal is for new residential development which does not accord with the development plan's overall spatial strategy and is not allocated through the Site Allocations DPD and is contrary to Colchester Borough Core Strategy Policies SD1 (spatial strategy) and H1 (housing delivery), and Section 1 new Local Plan Policies SP1 (presumption in favour of sustainable development) and SP3 (spatial strategy). The application also proposes development outside the settlement boundary for Wivenhoe as defined in*

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*the Core Strategy contrary to Core Strategy Policy ENV1 (unallocated greenfield sites outside settlement boundaries).*

*The adopted Section 1 Local Plan (2021) and emerging Section 2 Local Plan 2017- 2033 are both relevant to the determination of this application. The emerging Section 2 Local Plan is at a very advanced stage, having been found sound following Examination, and therefore considerable weight attaches to Policies SG2 (housing delivery) and SS16 (Wivenhoe).*

*The made Wivenhoe Neighbourhood Plan (WNP) carries full weight. Policy WIV29 of the made WNP allocates the application site for development subject to a number of criteria and in line with a plan 'Broadfields Residential Allocation' at Fig 35 that accords with the development boundary that is reflected in Section 2 Policy SS16. The scheme proposes a significant proportion of the residential development north of the settlement boundary and therefore north of the high voltage power lines that dissect the site. Neither the adopted nor emerging Local Plan policies lend support to the proposed development due to the encroachment into land allocated in WIV29 for open space/sports fields. The proposal is outside the settlement boundary as shown on the made WNP. Approval of a planning application contrary to this policy framework would be contrary to the development plan and lacking justification being intrinsically harmful and undermining the recently made WNP. Furthermore, by bringing the residential element of the scheme further north than the allocation allows, the scheme will cause demonstrable landscape harm particularly when the site is viewed from Elmstead Road.*

2. *The application fails to include a legally binding mechanism to secure a range of planning obligations required in association with the proposed development, comprising*
  - (a) 20% affordable housing, and financial contributions towards:*
  - (b) Open Space,*
  - (c) Parks and Recreation;*
  - (d) Community Facilities,*
  - (e) Education,*

(f) *Habitat Regulations mitigation*

(g) *Archaeology.*

*The proposed development is therefore contrary to: the sustainable development principles in the NPPF 2021, in the Adopted Local Plan Section 1 Policy SP2 and SP6, Adopted Core Strategy Policy H4 (Affordable Housing); and adopted Development Policies DP3 (Planning Obligations and the Community Infrastructure Levy). It is also contrary in this context to the following adopted guidance: Supplementary Planning Document Affordable Housing (adopted 15th August 2011); Provision of Community Facilities (adopted 28th September 2009 updated July 2013) Supplementary Planning Document Provision of Open Space, Sport and Recreational Facilities (adopted 24 July 2006) and The Essex Coast RAMS SPD (adopted May 2020). It is contrary, finally, to Supplementary Guidance issued by Essex County Council (Developers' Guide to Infrastructure Contributions (revised 2016).*

1.6 The decision notice was issued on the 14 June 2022.

1.7 The appeal was lodged on the 13 August 2022 and the Inquiry is scheduled for 4 days commencing on Tuesday 13th December 2022.

1.8 The Parties are preparing a Statement of Common Ground. The Council and the Appellant are also in discussion in relation to a draft s.106 Agreement which will be subject to the details of any planning approval. Such an agreement is agreed to be necessary. The requirements of the s.106 Heads of Terms are discussed by the Council without prejudice to its case that the appeal should be dismissed.

## **2 SITE DESCRIPTION**

2.1 The whole appeal site extends to 11.58 hectares, and it is located adjacent to the north-eastern edge of the town of Wivenhoe. The site is approximately 2 km from the south-eastern edge of Colchester and lies to the south of Broad Lane Sports Ground and Elmstead Road. The site comprises undeveloped open land, bordered by housing, sports fields and the wider countryside. The eastern section of the site forms part of the non-designated Wivenhoe Cross Pit Local

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Wildlife Site (LoWS) which is not to be developed. This area extends to the south where land has been reclaimed from former quarrying activities and is now used for wildlife conservation, walking and informal recreation.

- 2.2 The topography of the site is broadly level with a fall across the site from approx. 34m AOD in the northern most corner to 31m AOD in the south. There are overhead power lines crossing the site with pylons located within the site close to the west and east boundaries. The site is partially bordered by ditches, mature trees and some hedgerows.
- 2.3 The area of site to be developed for residential extends to 3.5 hectares, the area to be set aside for sports pitches extends to 2 hectares and new open space will comprise 5.18 hectares of land. In addition, access will be created to the eastern LoWS parcel creating public access.
- 2.4 The site is not subject to any historic designations. The eastern part of the site is a local wildlife site (LoWS) designated in part as a result of former quarrying operations and reclamation. The site is located in Flood Zone 1.
- 2.5 Access to the site is taken from Richard Avenue.
- 2.6 It is anticipated that a description of the site and surrounding area will be the subject of agreement in a Statement of Common Ground.

### **3 PLANNING HISTORY**

- 3.1 There is no relevant planning history for the appeal site.

### **4 PLANNING POLICY**

- 4.1 Since the refusal of planning permission in June 2022, Colchester Borough Council has adopted its Section 2 Local Plan. The Local Plan Colchester Borough Local Plan 2017 – 2033, Section 2 was adopted in July 2022, and together with the previously adopted Section 1 Local Plan, has thereby superseded the following documents which are referred to in the reasons for refusal:

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- Core Strategy Focused Review Version (July 2014),
  - Site Allocations Adopted October 2010,
  - Development Policies Focused Review Version (July 2014)

These superseded documents are therefore no longer relevant to this appeal.

4.2 The development plan for the area now comprises the Colchester Borough Council Local Plan 2013 – 2033 Section 1 – North Essex Authorities’ Shared Strategic Section 1 Plan (adopted February 2021), the Local Plan Colchester Borough Local Plan 2017 – 2033, Section 2 Adopted July 2022 and the Wivenhoe Neighbourhood Plan (Made 2019).

4.3 The following policies are relevant to the consideration of this appeal proposal:

**Local Plan 2017-2033 Section 1** (Section 1 Local Plan)

4.4 The shared Section 1 of the Colchester Local Plan covers strategic matters with cross-boundary impacts in North Essex and is shared by Colchester with the neighbouring authorities of Tendring and Braintree. This Section of the Plan includes a strategic vision and policy for Colchester.

- SP1 Presumption in Favour of Sustainable Development
- SP2 Recreational disturbance Avoidance and Mitigation Strategy (RAMS)
- SP3 Spatial Strategy for North Essex
- SP4 Meeting Housing Needs
- SP7 Place Shaping Principle

**Local Plan 2017-2033 Section 2** (Section 2 Local Plan)

4.5 Section 2 of the Plan relates to Colchester Borough only and provides the policy framework, site allocations and development management policies for the Borough up to 2033.

- SG2 – Housing Delivery
- ENV1 – Environment (Replaced Core Strategy ENV1)
- SS16 – Wivenhoe

4.6 The reason for refusal alleges that the development is contrary to Core Strategy

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ENV1. Local Plan Section 2 Policy ENV1 has replaced Core Strategy ENV1 and whilst it is accepted that the new policy is not specifically referred to in the reasons for refusal, the Council maintains that it is relevant and will therefore refer to its contents rather than the superseded policy.

### **Wivenhoe Neighbourhood Plan (WNP)**

- WIV29 – Land behind Broadfields

4.7 The following adopted Supplementary Planning Documents (SPD) are also relevant to this appeal:

- The Essex Design Guide 1997
- Affordable Housing
- Community Facilities
- Open Space, Sport and Recreation
- Essex Coast RAMs – May 2020.

4.8 The National Planning Policy Framework 2019 (The Framework) sets out government policy and in particular includes a presumption in favour of sustainable development and policies aimed at significantly boosting the supply of housing nationally. The framework sets out the ‘golden thread’ of government policy and the three components of sustainable development. The proposal will be analysed in respect of both these considerations as well as the broader requirements of National and Local Government policy.

## **5 THE COUNCIL’S CASE**

5.1 The Council considers that the proposed development is contrary to the development plan, and that the harm stemming from that conflict, and the harm to the landscape, outweighs the material considerations in favour of granting planning permission, applying s.38(6) of the PCPA 2004.

5.2 In accordance with S38 (6), the Council will contend that the starting point in the determination of this appeal is the Development Plan. Following the adoption of the Local Plan Section 2 in July 2022, the Development Plan for the Borough is up to date and should be given full weight. The Development Plan, which

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includes the made Wivenhoe Neighbourhood Plan, contains specific policies to the appeal site and the Council will demonstrate that the appeal proposal is contrary to those policies.

### **Reason for Refusal No 1**

- 5.3 The proposal is for new residential development which does not accord with the development plan's overall spatial strategy and allocation. The Council accepts that part of the appeal site is allocated for development but considers that the appeal proposals do not accord with the allocations and the Settlement Boundary for Wivenhoe.

#### Policy Context

- 5.4 The overall Spatial Strategy for North Essex, including Colchester Borough, is contained in Policy SP3 of the Section 1 Local Plan. Policy SP3 confirms that a new Garden Community on the Tendring/Colchester border is to be developed but that existing settlements will be the principal focus for additional growth across the North Essex Authorities area within the Local Plan period. 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.
- 5.5 Future growth will be planned to ensure existing settlements maintain their distinctive character and role, to avoid coalescence between them and to conserve their setting. The Policy also requires that the respective local planning authorities will identify a hierarchy of settlements in their Section 2 Plans where new development will be accommodated according to the role of the settlement, sustainability, its physical capacity and local needs.
- 5.6 The spatial hierarchy for the Borough is set out in Policy SG1: Colchester's Spatial Strategy of the Section 2 Local Plan. The spatial hierarchy focuses growth on the urban area of Colchester, reflecting its position as the main location for jobs, housing, services, and transport. The next or second tier of preferred growth includes a Garden Community straddling the boundary with



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Tendring District Council which will be developed over the plan period and beyond, and existing Sustainable Settlements within the Borough most of which are planned for appropriate growth. Wivenhoe is included as a Sustainable Settlement.

- 5.7 Policy SG2 (Housing Delivery) of the Part 2 Local Plan provides the housing requirement of 14,720 for the Borough over the plan period of 2017 to 2033 and confirms that in order to maintain the vitality and viability of the Borough's smaller towns and villages, an appropriate level of new development will be brought forward in Sustainable Settlements to support new homes and economic and social development. Details on those allocations are provided in Policies SS1-SS16 (Sustainable Settlements). Wivenhoe is identified to deliver 250 houses through new allocations between 2021 to 2033.
- 5.8 Policy SS16 relates to Wivenhoe and relies on the made Wivenhoe Neighbourhood Plan (WNP) for the relevant policies for development proposals in the settlement. It confirms that the WNP identifies the appropriate settlement boundary for Wivenhoe and also identifies specific sites for housing allocations needed to deliver the 250 dwellings. Policy SS16 also confirms that the WNP sets out policies needed to support this housing delivery i.e., housing mix, type of housing and density for each site allocated for housing and identifies the infrastructure requirements to support new development.
- 5.9 In addition, the Policy also confirms that proposals for development outside of the settlement boundary will not be supported unless the Neighbourhood Plan or other Local Plan policy specifically allows for it and that all development proposals in Wivenhoe Neighbourhood Plan Area will be determined against and be required to comply with policies in the Wivenhoe Neighbourhood Plan and any relevant Local Plan policies.
- 5.10 The settlement boundary of Wivenhoe is now defined by the made 2019 WNP and has replaced that set out in the now superseded Core Strategy. The Proposals Map (and Fig 35) also shows the respective allocations for the appeal site, in particular the disposition of the allocated housing
- 5.11 Policy WIV29 of the made WNP allocates part of the appeal site for development subject to a number of criteria and in line with a plan 'Broadfields Residential

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Allocation' at Fig 35 that accords with the development boundary that is reflected in Section 2 Policy SS16. In contrast, the appeal scheme proposes a significant proportion of the residential development north of the adopted settlement boundary and north of the high voltage power lines that now dissects the housing site. Neither the adopted Local Plan nor the Neighbourhood Plan policies lend support to the extension of the residential development northwards and its encroachment into land allocated in Policy WIV29 for open space/sports fields.

5.12 It is noted that the Appellant has argued that the extension of the housing to the north of the power lines beyond the allocated area is necessary because the allocated site cannot accommodate the 120 dwellings required by policy. The Council does not accept that this argument provides an adequate justification for the provision of 35 of the dwellings outside the settlement boundary and the harm that results. The Appeal site excludes the southern part of the allocated land and whilst it is understood that land is in separate ownership, the Council has seen no evidence to demonstrate that it is not capable of being brought forward as part of a comprehensive scheme on the appeal site.

5.13 The Council does not accept that the site is constrained to the extent that the Appellant has stated. The housing allocation extends up to the power line that crosses in an east/west direction and it is fully accepted that any development will need to provide an easement for these cables along its northern boundary. However, it is not understood how this can equate to 0.5ha as suggested by the Appellant<sup>1</sup>. It is also not understood how the developable area of the allocated site is reduced to 2.81ha as advanced in the Design and Access Statement and also in the Appellant's Appeal Statement of Case. The Council will contend that the area identified on the Neighbourhood Plan Proposals Map and clarified in Fig 35, represents the correct area and development should remain in this area. It is anticipated that a breakdown of the areas involved will be included in the Statement of Common Ground.

5.14 The Council considers that the grant of planning permission for the current appeal proposal is contrary to this policy framework, it is contrary to the development plan and lacks justification being intrinsically harmful and undermining the recently made WNP and the Section 2 Local Plan.

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<sup>1</sup> Page 6 of Design & Access Statement

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5.15 Furthermore, by bringing the residential element of the scheme further north than the allocation allows, the Council considers that the scheme will cause demonstrable landscape harm.

#### Landscape

5.16 With respect to the landscape and visual effects arising from the proposed development the Council will set out its case that the proposal will create harm to local landscape character and will result in adverse visual effects on a range of local receptors and particularly from Elmstead Road.

5.17 In allocating part of this agricultural landscape for residential development it was both recognised that the site allocation (Wivenhoe NP Policy 29) would have created a range of landscape impacts and visual effects, some of which would have been harmful and adverse from a number of viewpoints. However, the changes and extension proposed to the site area, bringing the housing further north than the allocation and therefore into a more prominent position, combined with the arrangement of housing, open space and sports fields will exacerbate that harm and result in additional and unacceptable impacts. The Council considers that these impacts are such that the development will not contribute to and enhance the natural and local environment, contrary to the NPPF Para 174 and the CBC Local Plan 2022 Policy ENV1.

5.18 The Council will set out its case that the Local Wildlife Site (LoWS) should be considered as a Valued Landscape in respect of the NPPF Para 174 a) and considering the criteria relating, in particular, to natural heritage, character, scenic value and recreational value.

5.19 The Council will review the wording of the suggested Planning Conditions to ensure that they cover all matters relating to detail which would need to be resolved in the event that this appeal is allowed.

5.20 The Council will highlight a number of specific design matters which will contribute to conflict with landscape features and exacerbate the harm created by the development and which are contrary to NPPF Paras 130 and 131.

5.21 The Council considers that the harm to the development plan and the harm to

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the landscape caused by the appeal proposal is unacceptable. The Council considers that there are insufficient material considerations to justify the grant of planning permission contrary to the development plan.

#### Material Considerations

5.22 It is accepted that the National Planning Policy Framework (NPPF) is a material consideration. Its policies were taken into account in the preparation and examination of all three documents that comprise the statutory Development Plan. The Development Plan. Policy SP1 of the Section 1 Local Plan applies the presumption in favour of sustainable development as set out in Paragraph 11 of the NPPF and confirms that development that complies with the Plan will be approved without delay, unless material considerations indicate otherwise. Paragraph 11 of the NPPF confirms also that decisions should apply a presumption in favour of sustainable development and sets out what this means for decision making at paragraphs 11c) and d). The Council contends that the development does not satisfy paragraph 11c) and that paragraph 11 d) is not applicable here. In Colchester Borough's case, there are very relevant development plan policies relating to the appeal site and those policies are also up to date. Furthermore, in respect of Footnote 8, the Council is able to demonstrate a 5.25 year supply of housing land.<sup>2</sup> As a consequence, there is no 'tilted balance' that needs to be applied.

5.23 However, the Council accepts that there are benefits to the scheme which represent material considerations that should be taken into account in the determination of this appeal. The Council accepts that the proposal will provide some 120 dwellings and will therefore contribute towards maintaining the Borough's housing supply. That housing will also provide 20% affordable housing which is consistent with the current policy contained in the Wivenhoe Neighbourhood Plan and will provide much needed affordable housing. The proposal will also bring forward and formalise the open space on the appeal site and will make the area of LoWs within the appeal site an area of open space. The appeal site currently has no formal recreational use although it is used by local people for walking as evidenced by the numerous informal footpaths around the site and the LoWs.

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<sup>2</sup> Five Year Housing Land Supply Statement 2022

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- 5.24 However, the Council will argue that these benefits will be delivered by any policy compliant scheme on this site. The policy relating to the allocation is clear on what any development is expected to deliver and the Council contends that a development which complies with the policy and is located within the allocated site is capable of providing the same benefits. Furthermore, a more policy compliant scheme would provide better connectivity with the land to the south and greater certainty about the delivery of the footpath/cycle than is shown on the submitted scheme.
- 5.25 Paragraph 12 of the NPPF advises that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making and that where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. The NPPF confirms that local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed. The Council contends that in this instance, the material considerations do not justify the setting aside of the Development Plan. Although the Appellant argues that the number of units the area is allocated to provide cannot be accommodated, the Council has seen no substantive evidence that the allocated site cannot deliver the quantum of development identified.
- 5.26 The Council contends that the proposed development is contrary to the Development Plan, and that the harm stemming from such breaches is not outweighed by material considerations in its favour.

### **Reason for Refusal No 2**

- 5.27 The appeal proposal failed to provide a legally binding mechanism to secure a range of planning obligations required to mitigate the impacts of the development as required by Policy SP2 and SP6 of the Section 1 Local Plan and also Policy WIV29 of the Neighbourhood Plan. These obligations relate to the provision of 20% affordable housing and also in relation to financial contributions towards the following:

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- The provision and future management and maintenance of the proposed Open Space,
  - The provision and future ownership and management/maintenance of the Football pitches
  - Contribution towards the improvement of Broomgrove School Community Swimming Pool including changing room provisions. There is a lack of sports provision in the ward and this project aims to positively impact on the health and wellbeing of the community by offering opportunity for exercise
  - Contributions towards Education provision for Early Years and Childcare and for Secondary School travel,
  - Contribution towards habitat mitigation as required by the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS)
  - Contributions towards the museum display of any Archaeological remains found on the site.

5.28 The Council and the Appellant are currently in discussion on a draft S106 and it is anticipated that a S106 will be produced which will address these concerns. However, if an acceptable S106 cannot be provided, the Council will argue that the development is unacceptable in terms of its impact in respect of the lack of provision for affordable housing, education provision and recreational provision in the area, and how they would be further exacerbated by the proposed development, together with the harmful effect of further unmitigated pressure on the Essex Coastal Habitat sites.

### **Conditions**

5.29 The Officer's report to Committee contained a set of recommended conditions to be attached to any planning permission. The Council considers that these will form the basis for discussion with the Appellant and will seek to agree a set of appropriate conditions with the Appellant.

## DOCUMENTS

The following documents may be referred to or relied upon by the council in preparing and presenting their case:

- Planning application file reference 210965
- Consultation responses to the application
- Colchester Borough Local Plans Sections 1 & 2
- Wivenhoe Neighbourhood Plan
- Supplementary Planning Documents (SPD's):
  - Affordable Housing
  - Community Facilities
  - Open Space, Sport and Recreation
  - Essex Coast RAMs – May 2020.
- Housing Land Supply Statement 2022
- Landscape Character Assessments TDC 2001, ECC 2003 and CBC 2005
- Townscape Character Assessment 2006
- Colchester Local Wildlife Sites 2015 Part 4
- Landscape Institute Technical Guidance Note 02/21 Assessing Landscape Value outside National Designations

(and others as may be agreed in the Statement of Common Ground or notified to the Appellant)