
Appeal Statement

Land at, Broadfields, Wivenhoe, Colchester

PINS reference: TBC

LPA reference : 210965

Prepared by Savills on behalf of Taylor Wimpey UK Limited

August 2022

Appeal Statement

Land at, Broadfields, Wivenhoe, Colchester



Contents

1.	Introduction	1
2.	The Appeal Site and Surrounding Area	6
3.	Background	8
4.	The Appeal Scheme Proposals	11
5.	Planning Policy Context	17
6.	Does the Proposal Comply With the Development Plan?	22
7.	Planning Conditions & Planning Obligations	39
8.	Conclusion and Summary	41

Appendices

- **Appendix 1:** Decision Notice
- **Appendix 2:** Committee Report
- **Appendix 3:** Constraints Plan (Drawing no. TW027-AP-05)
- **Appendix 4:** Pre-application response

1. Introduction

- 1.1 Savills has been instructed by Taylor Wimpey UK Limited to prepare an appeal against the refusal of planning application (LPA reference 210965), submitted to Colchester Borough Council (CBC) for the following development proposal as set out in the decision notice:

“Construction of residential development, access, landscaping, public open space, and associated infrastructure works”

- 1.2 The appeal relates to the refusal of a full planning application (LPA Ref: 210965) on 14th June 2021. The reasons for refusal cited on the Decision Notice are as follows:

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 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).

1.3 A copy of the Decision Notice dated 14th June 2022 is submitted to the Planning Inspectorate as part of the appeal submission. The decision notice and Committee Report can be found appended to this appeal statement.

1.4 To assist the Inspector in dealing with this appeal, a draft Statement of Common Ground (SOCG) has been prepared by the appellant. This draft has been issued to CBC upon submission of the appeal to the Planning Inspectorate. This draft SOCG sets out matters which are considered agreed between both the appellant and the local planning authority (LPA). The appellant will liaise with CBC to agree the draft SOCG in advance of the Inquiry.

The Appellant

1.5 Taylor Wimpey is one of the largest homebuilders in the United Kingdom. As a national house builder, the company has considerable experience and expertise in delivering sustainable residential schemes that people

want to live in. Taylor Wimpey has extensive experience of construction and property development, and of working in partnership with local authorities and affordable housing providers.

- 1.6 Taylor Wimpey runs its regional businesses as local homebuilders and has significant in-depth knowledge and experience of the local market. The company aims to develop vibrant communities with a true sense of place that fit into their surrounding area and meet the needs of local people. Taylor Wimpey is committed to innovation in both construction and design and is keen to ensure that the schemes brought forward create sustainable, attractive and desirable places for people to live and work.

Overview of Development

- 1.7 The proposed development seeks to deliver a site allocated within the Wivenhoe Neighbourhood Plan under Neighbourhood Plan Policy WIV29 “Land at Broadfields” for a residential development comprising 120 dwellings (Use Class C3) on a site extending to 11.58 hectares, together with public open space, landscaping and associated infrastructure on the land behind Broadfields.
- 1.8 The residential area is positioned to the south of the wider site and includes a mix of houses, including two, three and four bedroom houses suitable for families of various sizes and stages. All of the proposed affordable dwellings will include wheelchair adaptable units. A total of 20% (24 units) of the proposed dwellings will be delivered as affordable housing in the form of affordable rent and shared ownership housing. The majority of dwellings will have the parking provided within the curtilage of the property with space for visitor parking on streets or within designated laybys.
- 1.9 The proposed development will be split into three areas: the residential area; the open space and land for new sports pitches. The development will have a residential density of 34 dwellings per hectare (dph) with 120 dwellings on 3.5 hectares of land.
- 1.10 Vehicular access into the site will be via Richard Avenue, and a new footpath and cycle way will be created on the Elmstead Road frontage linking through to Broadfields and the proposed housing.
- 1.11 A surface water attenuation basin is incorporated into the southeast corner of the residential area of the site placed at the lowest point to address the technical drainage and flood requirements which arise with residential use.
- 1.12 New open space will be provided within the northern part of the site; it will be publicly accessible. The area will be landscaped and will provide walking routes and planting. The open space on the eastern part of the site (Local Wildlife Site) will be untouched as part of this application. However, access to it will be created enabling the wider public access to the site which is currently private land.

1.13 Adjacent to the open space, along the northern edge (adjacent to Broad Lane Sports Ground) 2 hectares of land will be set aside for new sports pitches. Taylor Wimpey will be providing the land only and will not be responsible for design and delivery of the sports facilities.

Pre-Application Consultation

1.14 Pre-application discussions have been held between the applicant and CBC prior to the submission of this application. The pre-application discussions with CBC planning and design officers commenced in January 2020 and comprised a series of meetings with planning, design, housing and landscape officers and centered around the housing mix and the proposed layout, as well as more detailed elements of the scheme and their compliance with the Neighbourhood Plan.

1.15 A PPA between the applicant and the Council was agreed in October 2020 and then updated in May 2021.

1.16 Taylor Wimpey has also discussed the proposed plans with Wivenhoe Town Council in March 2020 and February 2021.

1.17 In addition, in February 2021, the Appellant met with the neighbouring sports club at Broad Lane Sports Ground.

1.18 Full details of the background of the planning application is set out in Section 3.

Supporting Documents

1.19 This Appeal Statement should be read and considered in conjunction with the plans, drawings and documents submitted as part of the original planning application, the additional information provided in order to validate the application, and additional information requested during determination, alongside additional supporting documents submitted as part of this appeal.

1.20 The following documents have also been submitted with this Appeal statement:

- **Appeal Form**, prepared by Savills on behalf of Taylor Wimpey UK Ltd;

1.21 A Draft Statement of Common Ground, will be prepared by Savills for discussion with CBC during the determination of the appeal, an initial draft is submitted with this appeal.

Structure of the Statement

1.22 The structure of this Appeal Statement is as follows:

- **Section 2** (The Appeal Site and Surrounding Area) sets out a description of the site and surrounding area;

- **Section 3** (Background) explains the planning history of the site, neighbouring sites and the pre-application engagement undertaken;
- **Section 4** (The Proposed Development) sets out a detailed description of the application's development proposals;
- **Section 5** (Planning Policy Context) outlines the relevant planning policy framework that the proposals are to be considered against;
- **Section 6** (Does The Proposal Comply With The Development Plan) sets out the main planning considerations;
- **Section 7** (Developer Contributions) sets out the likely planning obligations, potential planning conditions and CIL payments which could be used to secure the permission
- **Section 8** (Conclusions and Summary) presents out conclusions and a final summary.

1.23 The appendices below can be found at the bottom of the Appeal Statement.

- **Appendix 1:** Refusal Decision Notice
- **Appendix 2:** Committee Report
- **Appendix 3:** Constraints Plan (Drawing no. TW027-AP-05)
- **Appendix 4:** Pre-application response

2. The Appeal Site and Surrounding Area

2.1 This section provides a brief description of the appeal site and the immediate surrounding area. Also provided is an overview of the sites allocation and relevant planning designations.

The Appeal Site

2.2 The whole appeal site extends to 11.58 hectares and it is located within Wivenhoe at the north eastern edge of the settlement. See Figure 2.1 below. The site is approximately 2 km from south eastern edge of Colchester, and lies to the south west of Broad Lane Sports Ground and Elmstead Road. The site comprises greenfield land and the eastern section of the site forms part of the non-statutory designate Wivenhoe Cross Pit Local Wildlife Site (LoWS).

2.3 A site location plan is provided in Figure 2.1 below.

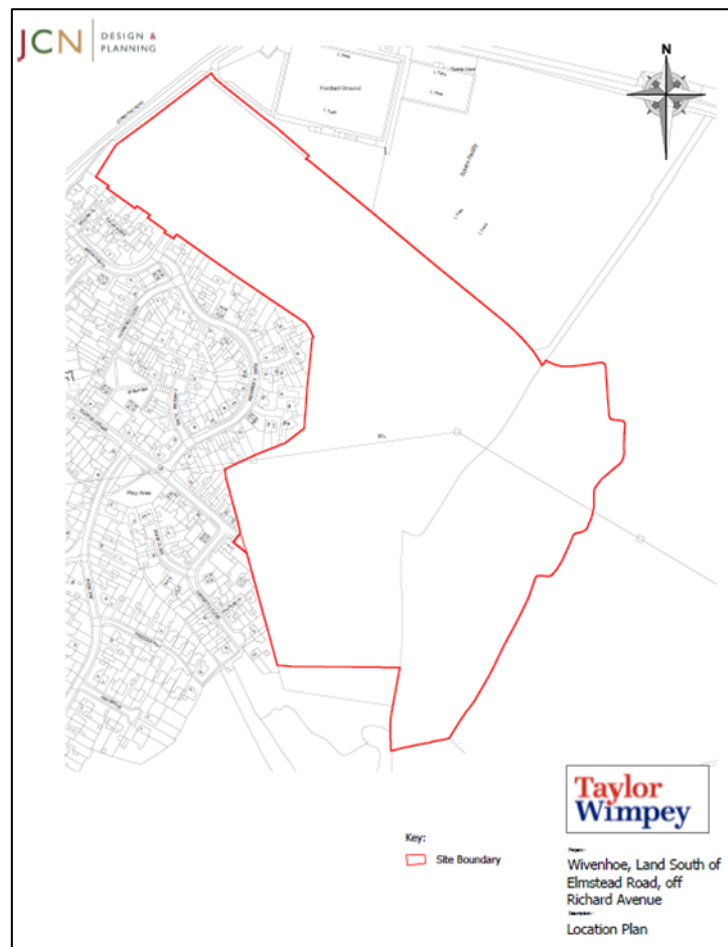


Figure 2.1. Site Location Plan

- 2.4 The area of the appeal site to be developed for residential use 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 making it publicly accessible.
- 2.5 The site is not subject to historic designations, but the eastern part of the site is a local wildlife area. The site is located in Flood Zone 1.

Surrounding Area

- 2.6 The surrounding area comprises residential development to the west which consists of mostly two storey dwellings at a medium to low density. To the east is the Broad Lane Sports Ground. Wivenhoe town is just over a mile to the south west.

3. Background

Planning History

- 3.1 Prior to the submission of the planning application, a desk based planning history search revealed that there have been no planning applications or Section 78 appeals submitted on the appeal site. However, as aforementioned, the site is allocated for redevelopment.

Surrounding Area

- 3.2 To the west of the site an application (LPA Ref. 213515) was submitted in December 2021 by Manor Oak Homes Ltd. The scheme is described in full below:

“Outline planning application with all matters reserved, except for access, for the construction of a minimum of 25 dwellings with associated open space, landscaping, and infrastructure. Change of use of agricultural land to a memorial park for the interment of ashes with associated access and car park for 12 cars.”

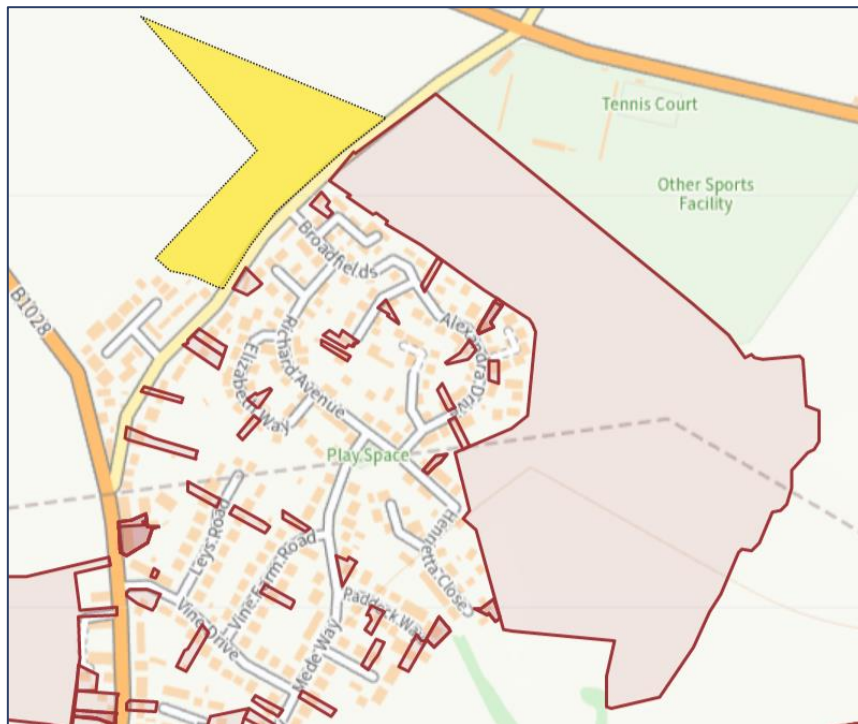


Figure 3.1: Application Site Location (Shaded Yellow) (Ref. 213515)

- 3.3 This application is still awaiting decision.

3.4 Another application (LPA Ref. 213507) by Manor Oak Homes Ltd was submitted in December 2021 at land to the west of Wivenhoe, near to the appeal site. The description of development is as follows:

“Outline planning application with all matters reserved, except for access, for the construction of a minimum of 80 dwellings, a 60 bed care home (Use Class C2), and up to 8 charity homes with associated open space, landscaping, and infrastructure. Provision for a dedicated access to proposed allotments.”

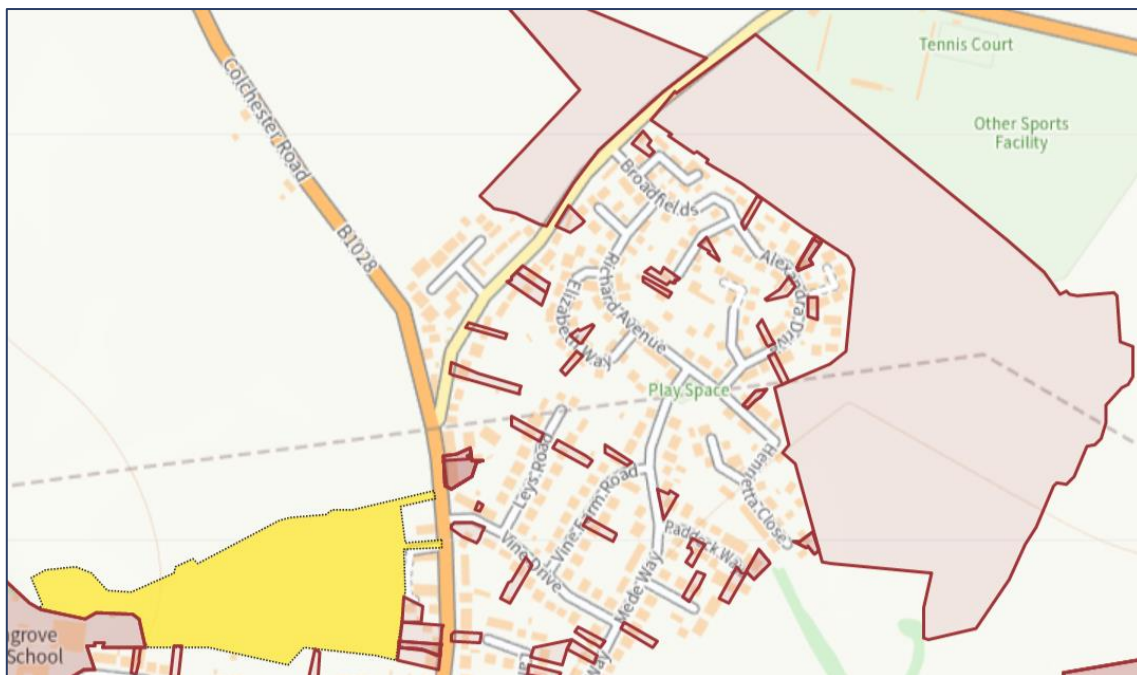


Figure 3.2: Application Site Location (Shaded Yellow) (Ref. 213507)

3.5 This application is also currently under consideration.

Pre-application Discussions

3.6 Prior to the submission of the full planning application at the appeal site, various pre-application discussions were undertaken, as outlined below.

3.7 The appellant conducted a series of pre-application meetings with the LPA, the first of which was held in January 2020 to discuss the principle of development the key constraints on the site. Officers recommended at this meeting to engage with the Town Council on the constraints have impacted on the ability to bring forward the site in accordance with the site allocation.

- 3.8 Email exchanges with officers focused on a number of key development management requirements, for example, confirming the extent of accessibility requirements. Officers also confirmed the extent of validation requirements on 16th April 2020.
- 3.9 Advice was received from the Planning Policy team in connection with the footpath location on 24th June 2020 and this is reflected in the proposals. Advice in relation to the layout was received on 7 December 2020 and again in January 2021.
- 3.10 The application was then submitted on 8th April 2021.
- 3.11 Following the submission, the appellant continued dialogue with the LPA to refine the application and make amendments to address consultee comments particularly in relation to urban design. This constructive dialogue led to a recommendation for approval from Officers.

Public and Stakeholder Engagement

- 3.12 The appellant held a public consultation event on 8th February 2021 on a webinar where the design team were present to answer any queries from members of the public. The proposed scheme was generally well received and the applicant has since sought to address any concerns received at the public consultation. At the event, the applicant provided responses in relation to design, affordable mix, green space, sports facilities and transport impact. Full details on the public exhibition can be found in the Statement of Community Involvement, prepared by Rock Kitchen Harris which accompanied the application and is submitted as part of this appeal.
- 3.13 A number of meetings have been held to update them on the emerging and latest scheme proposals and to discuss any comments or concerns which have mainly related to the landscaping proposals and pedestrian and cycle infrastructure.
- 3.14 The applicant also held a meeting with stakeholders of the Sport Pitches to the north of the site on 15th February 2021, groups included CBC, Town Council, Wivenhoe Football Club, Wivenhoe Tempest Football Club, Essex University, and Wivenhoe Tennis Club.

4. The Appeal Scheme Proposals

4.1 This appeal scheme seeks the comprehensive development of the appeal site to deliver:

“Construction of residential development, access, landscaping, public open space, and associated infrastructure works”

4.2 Full details of the appeal scheme are set out in the Planning Statement, prepared by Savills and the Design and Access Statement and Plans prepared by JCN Architects and are submitted in support of this appeal.

Residential Use

4.3 The appeal scheme seeks to deliver 120 high quality residential dwellings. Details of the residential component are set out below.

Residential Typologies and Mix

4.4 The appeal scheme proposes a mix of dwellings typologies and sizes comprising 2, 3 and 4-bedroom houses. A range of tenures will be provided to suit a variety of needs, including private sale, shared ownership and affordable rent. The proposed mix and quantum of the affordable dwellings is in line with the Neighbourhood Plan allocation.

4.5 The proposed housing mix is set out in Table 4.1 below.

	Affordable (Affordable Rent)	Affordable (Shared Ownership)	Private	Total
2 Bed	6	3	36	45 (37.5%)
3 Bed	9	1	40	50 (41.7%)
4 Bed	4	1	20	25 (20.8%)
Total	19	5	96	120 (100%)

Table 4.1: Proposed Housing Mix

Affordable Housing

4.6 The proposed housing mix comprises of 96 private sale units and 24 affordable units, which equates to 20% on-site affordable housing provision, in accordance with the Neighbourhood Plan allocation. The affordable housing to be provided as shared ownership, and affordable rent.

4.7 Both private and affordable dwellings include the provision of family-sized units including three-bedroom units.

4.8 It is proposed that the affordable housing provision will be secured via a legal agreement.

Residential Quality and Inclusive Design

4.9 The proposed scheme dwellings are designed in accordance with current best practice contained in BS8300:2018 (Design of an accessible and inclusive built environment) and Building Regulations Approved Document M (2016 edition)

4.10 All of the proposed affordable housing will meet Part M4 (2) Building Regulations. 39 (33%) of the market housing will also meet Part M4(2) Buildings Regulations. One affordable unit will meet Part M4 (3) Building Regulations.

4.11 The proposed provision is in accordance with the emerging policy with regards to accessible and adaptable dwellings and is therefore acceptable.

Amenity Space

4.12 All houses proposed are provided with policy compliant private amenity space in the form of a garden to the rear protected by a lockable gate.

4.13 It is considered that all garden sizes proposed are of sufficient size and quality to provide meaningful and useable private amenity space. In addition, the public open space proposed to the north of the site would be in close proximity and accessible to all of the proposed units.

4.14 This is confirmed in the Committee Report where it states *“It is clear from the layout that all dwellings can be provided with gardens in excess of the minimum stands as set out in the Local Plan Policy DP16. This is held to be acceptable.”*

Landscaping and Amenity

4.15 The landscape proposals for the development have been designed by Andrew Hastings and full details of the landscaping proposals are set out in both the landscape Strategy and Landscape Masterplan submitted in support of the application.

4.16 The landscape masterplan is set out at Figure 4.2 below.

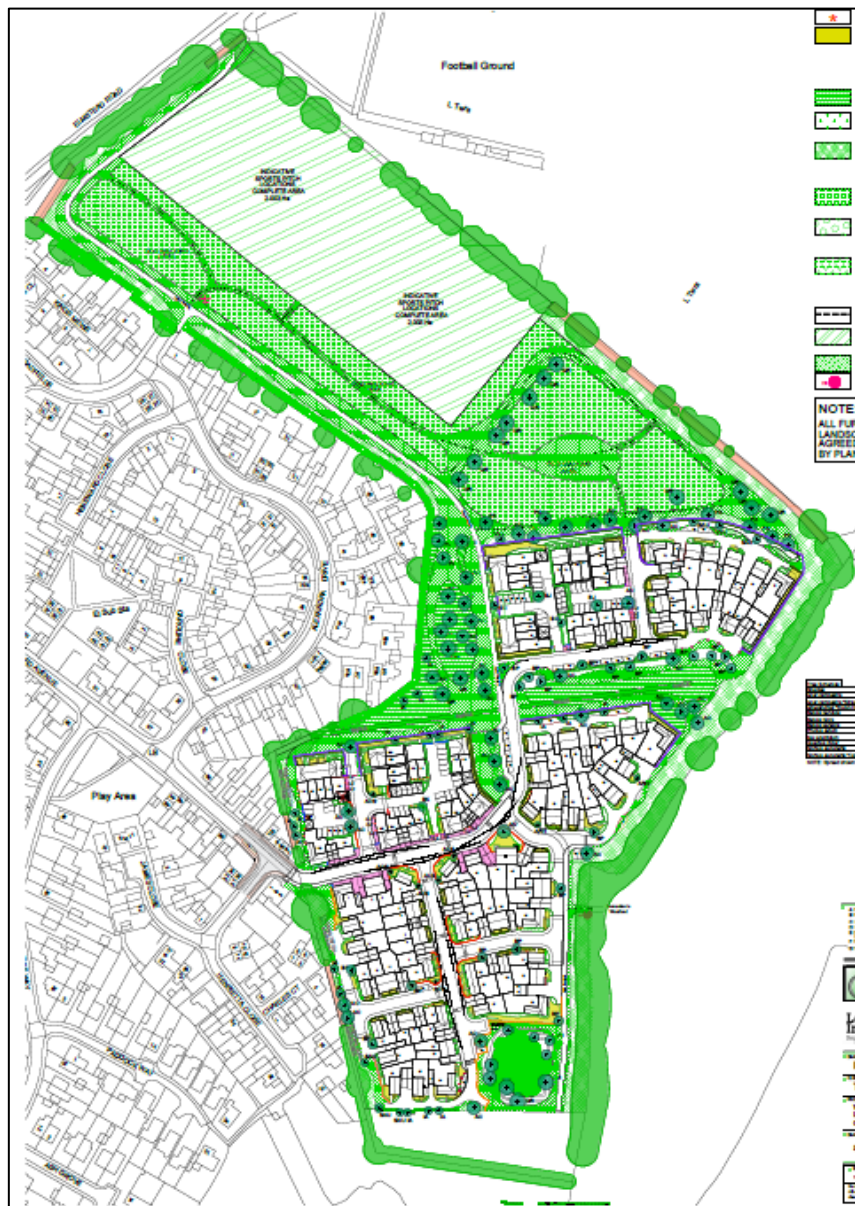


Figure 4.2. Landscape Masterplan (Drawing Ref. 20.5101.08 Rev G)

4.17 The landscaping proposals comprise three elements: private amenity spaces, public open spaces and land for sports pitches. This approach incorporates the principles established by the Neighbourhood Plan.

Public Amenity

4.18 The proposed development will include the delivery of a significant area of high quality public open space to the north of the site comprising of 5.18 hectares of land, which will obtain SANG status. This will be generously planted with native trees and shrubs, new native hedgerows, diverse grassland/meadows, mown grass paths

and retain existing features such as the woodland to the west. The setting will provide a high-quality space presenting opportunity for recreation, socialising and relaxation and ultimately creating a sense of place for the new community and neighbouring properties. The proposed scheme will also open up access to the Local Wildlife Site on the eastern boundary. This will protect the Local Wildlife Site through the incorporation of ecological mitigation and enhancement measures.

- 4.19 The space will be accessible to all existing and future residents with a new footpath and cycle way and two new accesses created in the western line of hedging.

Land for Sports Pitches

- 4.20 The Neighbourhood Plan allocation requires the provision of 2 hectares of sports pitches, the scheme incorporates 2 hectares for this. Following discussions with the CBC, Taylor Wimpey will be providing the land only and CBC will be responsible for delivering the sports facilities.
- 4.21 As shown on Figure 4.2, The Sports Pitches are proposed at the northernmost portion of the site. This is not in accordance with the Neighbourhood Plan allocation where the pitches are shown as to be delivered further south. The decision to locate the sports pitches is the result of unforeseen constraints related to the site which are set out in full detail later in this statement. It also represents a logical extension to the existing sports facilities and pitches located immediately north of the site and avoids them being located underneath the overhead powerlines.

Highways, Access, Servicing, Car and Cycle Parking

- 4.22 The layout proposes a Primary Street to run east-west through the middle of the site connected to Richard Avenue on the western boundary of the site. A network of streets will accommodate access for pedestrians, cyclists and vehicles, offering ease of access for all between the new homes and the wider network of landscaping and streets.
- 4.23 Car Parking has been provided for each dwelling in accordance with Essex County Council Parking Standards. The layout also includes lockable sheds and garage or carports which will provide secure cycle parking for each dwelling.
- 4.24 The scheme also includes a shared footpath and cycle way which runs to the rear of the existing houses and through the open space, forming part of the link around the east side of the town. The path facilitates future connection to the land to the south that is delivered through policy WIV28, including an extension to the existing allotments and improvements to the permissive footpaths and rights of way.
- 4.25 With regards to refuse, a refuse vehicle would collect from the site once a week and it is assumed this arrangement is already in place for properties on Richard Avenue.

- 4.26 The site access has been designed to accommodate visits by waste, emergency and commercial delivery vehicles.
- 4.27 The scheme has also been design to accommodate a fire tender as required by Essex Fire and Rescue. Their approval was received 18th July following negotiations decision being issued.

Energy and Sustainability

- 4.28 An energy statement and addendum, prepared by Energist, was submitted in support of the application.
- 4.29 A combination of demand-reduction measures and energy-efficiency measures will deliver the Applicant's target for on-site reduction in energy. The Development has been designed to generate a total reduction in energy of 13.1% over the TER ADL 2013.
- 4.30 The strategy involves a fabric first approach involving measures such as Energy-efficient building fabric and insulation to all heat loss floors, walls and roofs; Efficient-building services including high-efficiency heating systems; and Decentralised Mechanical Ventilation Extract System.
- 4.31 In addition, a total of 84kWp Photovoltaic Array will be installed across the site. The precise location of the PV's will be dealt with via condition to ensure they are installed on the most appropriate roofs for solar gain.

Ecology

- 4.32 The eastern section of the site forms part of the non-statutory designated Wivenhoe Cross Pit Local Wildlife Site (LoWS). The proposed scheme will not include any development on the LoWS on the eastern part of the site. Due to relatively low value of existing habitats on the wider site, there is opportunity to deliver measurable net gain through the implementation of a wildlife friendly landscaping scheme.
- 4.33 Through implementing the recommended mitigation and enhancements including sensitive layout design (retaining boundary habitats where possible), a wildlife friendly landscaping scheme, sensitive practices/management during construction and occupation (detailed via a CEMP and BMES), it is considered that any significant negative impacts from the proposed development upon protected and notable habitats and species will be fully mitigated in line with relevant wildlife legislation and national and local planning related to biodiversity for the site will be achieved.
- 4.34 It is therefore considered the scheme will provide suitable biodiversity measures that accords with the development plan.

Trees

- 4.35 A tree survey was undertaken by Haydens Arboricultural Consultants to assess the condition of the existing trees on site.

- 4.36 The tree survey confirmed that there are 23 individual trees, 15 groups of trees, 4 areas of trees and 7 hedges on the site. It advises that these features were found to be of mixed condition and age providing a variety of amenity benefits. All of the existing trees and hedgerows are on the edge of the site.
- 4.37 The report findings has informed the proposed layout of the scheme by retaining the existing trees on the edge of the land and using them to define the outer edges of the site, forming a focus for a new area of public open space that stretches north from the new homes. The existing belt of trees and hedges on the eastern side of the site will separate the new homes from the land that is already designated as a Local Wildlife Site. Existing trees on the western side will also be retained as part of the setting of the scheme.

Flooding & Drainage

- 4.38 The site is located in Flood Zone 1, at low risk from flooding. The principle of residential and other development on the site is considered acceptable through the allocation of the site in the Neighbourhood Plan.
- 4.39 A Flood Risk Assessment (FRA) was submitted as part of the application. The assessment considered that the site would not be at risk of flooding from fluvial sources, sewers, groundwater, or artificial sources. In terms of surface water drainage, an attenuation basin has been positioned at the lowest point of the site in the south eastern corner and has been integrated into the landscaping scheme.

5. Planning Policy Context

- 5.1 The appeal takes into account relevant national, regional and local planning policy. A brief summary of the relevant policy documents is set out below and the following section demonstrates that the appeal scheme is compliant with these policies.
- 5.2 Planning law requires that planning applications, and subsequently appeals, must be determined in accordance with the Development Plan, unless material considerations indicate otherwise as set out at Section 38 (6) of The Planning Compulsory Purchase Act 2004 and Section 70 (2) of the Town and Country Planning Act 1990.
- 5.3 The development plan for CBC comprises:
- National Planning Policy Framework (adopted July 2021); and
 - Colchester Borough Council's Development Plan
- 5.4 At the local level, the CBC's Development Plan comprises:
- Local Plan Section 1 - Strategic Plan for North Essex (adopted 2021)
 - Local Plan Section 2 – Colchester Borough Local Plan 2017 – 2033
 - Affordable Housing SPD (adopted 2011)
 - Wivenhoe Neighbourhood Plan (Made 2019)

Statutory Development Plan

National Planning Policy Framework

- 5.5 At the heart of the NPPF (2021) is a presumption in favour of sustainable development, which should be seen as a golden thread running through both the plan-making and decision-taking process.
- 5.6 This means approving development proposals that accord with the development plan without delay, and where there are no relevant development plan policies, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits of development. As follows (Paragraph 11):
- *Approving development proposals that accord with an up-to-date development plan without delay; or where there are no relevant development plan policies, or*

- *The policies which are most important for determining the application are out-of-date, granting permission unless:*
 - *The application of policies in this framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
 - *Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*

5.7 The NPPF footnote relating to paragraph 11 sets out what is considered by 'out-of-date'. The footnote states: *"This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 74); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years."*

5.8 A key objective of the NPPF is to significantly boost the supply of homes to ensure that a sufficient amount and variety of land can come forward where it is needed, and that the needs of groups with specific housing requirements are addressed.

5.9 NPPF paragraph 74 requires Local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirements set out in adopted strategic policies.

5.10 NPPF paragraph 13 states that Neighbourhood plans should support the delivery of strategic policies contained in local plans or spatial development strategies.

Local Planning Policy

Local Plan Section 1 - Strategic Plan for North Essex (adopted 2021)

5.11 The Strategic Plan for North Essex was formally adopted by a decision at CBC's's Full Council meeting on 1st February 2021. The Section 1 Plan includes policies for a Garden Community at Tendring / Colchester Borders. As set out above the formal adoption of the Section 1 in part replaces a number of the strategic policies contained within the Core Strategy and the adopted Local Plan will be replaced, in full, on the formal adoption of Section 2.

Local Plan Section 2 - Colchester Borough Local Plan 2017 – 2033

5.12 The Colchester Borough Local Plan 2017 – 2033 was adopted on the 4th July 2022. Policy SS16 which identifies the settlement boundary for Wivenhoe and notes that the Wivenhoe Neighbourhood Plan identifies sites for 250 new dwellings in Wivenhoe.

Wivenhoe Neighbourhood Plan

5.13 Wivenhoe Town Council adopted the Wivenhoe Neighbourhood Plan in 2019. The Plan conforms generally to the strategic policies and proposals of the Development Plan.

5.14 The site is allocated under Policy WIV29 of the Neighbourhood Plan as set out in Figure 4.1 below.

Figure 4.1: Extract from Neighbourhood Plan: WIV 29 Allocation

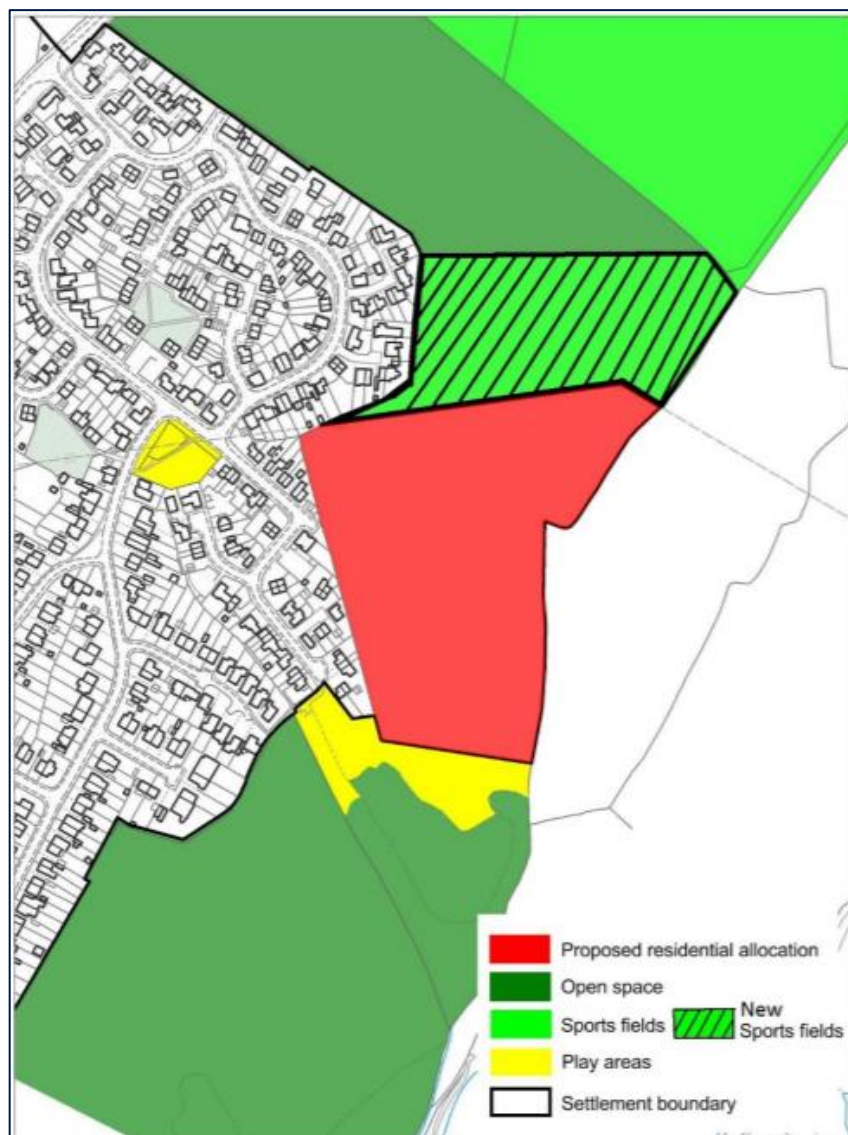


Figure 5.1: Figure 35 of Neighbourhood Plan Site Allocation

5.15 The site allocation total 11.58 hectares and is allocated for a minimum of 120 dwellings subject to a number of conditions as follows:

- i. Minimum of 45 dwellings with one or two bedrooms
- ii. No more than 25 dwellings shall have four bedrooms or more
- iii. Dwellings should be designed for older residents or active retirees should preferably be built to the Lifetime Homes standard
- iv. 20% of all properties to be affordable housing
- v. it can be demonstrated that the development will not have a detrimental impact on wildlife, as evidenced through an appropriate wildlife survey;
- vi. vehicle access into the residential part of the site shall be provided from Richard Avenue;
- vii. 2 hectares of land to the northern part of the site adjacent to Broad Lane Sports Ground as indicated on Figure 35 shall be provided for additional sports pitches;
- viii. a dedicated footpath / cycleway along Elmstead Road to link up Broad Lane Sports Ground with the built-up part of Wivenhoe shall be provided;
- ix. a shared-use footpath and cycle track provided directly linking the development to the facilities at Broad Lane Sports Ground and linking with the public footpath to the south of the site;
- x. a contribution shall be paid towards the creation of a combined footpath/cycle track linking the new development to the public footpath (FP No. 14) from The Cross;
- xi. contributions towards open spaces, sports, recreational facilities and community facilities shall be required in line with Borough Policies current at the time any application for planning permission is made.

5.16 In broad terms the Town Council is accepting of the principle of new development but with a focus on ensuring that new housing meets a range of needs, as well as maintaining quality of life for existing residents. It states that housing in the Wivenhoe area will have a variety of choices, design and living styles that meet the needs of residents, including the elderly, and respect the scale and character of the existing environment.

Emerging Development Plan Documents

5.17 CBC is consulting on Affordable Housing SPD. This notes that allocations within the Emerging Local Plan are expected to comply with Emerging Policy DM8 which requires 30% affordable housing. This SPD will replace the adopted Affordable Housing SPD (2011).

Essex Design Guide

5.18 The Essex Design Guide (2018) provides detailed design advice on the layout, design and spatial principles of new residential and mixed use development. The EDG version used by CBC is the 1997 edition and the recent 2018 version is used as a reference guide to help create high quality places with an identity specific to its Essex context.

6. Does the Proposal Comply With the Development Plan?

- 6.1 This section of the Appeal Statement assesses the acceptability of the development proposals. Firstly, it examines if the proposal complies or not with the development plan, and secondly if other material considerations indicate a conclusion that supports the development plan or overrides the presumption in favour of the development plan.
- 6.2 The assessment considers the proposal against the requirements of the NPPF, NPPG and the development plan for CBC as a whole.
- 6.3 The chapter clearly concludes that there are significant material considerations and substantial planning benefits that exist in this case. These other material considerations support the position of the prevailing policies, and asides from the site allocation, these demonstrate compliance with the development plan as a whole.

A.) Does The Proposal Comply Or Not With The Development Plan?

- 6.4 This section of the Appeal Statement considers the principle of the proposed development, with reference to the planning policy framework set out in the previous Section and Section 38(6) of the Planning and Compulsory Purchase Act 2004 which sets out that when making any determination under the Planning Acts, it should be in accordance with the Development Plan unless material considerations indicate otherwise.

Principle of Development

- 6.5 The site is allocated under Policy WIV29 of the Neighbourhood Plan identified for the delivery of a minimum of 120 homes. Which the scheme accords with. However, the settlement boundary in the adopted Plan follows the line of the overhead powerlines and in the proposed residential development extends beyond this, as a result of constraints. As such, whilst the principle is established there are areas of non – compliance which are set out in detail below.

Housing Delivery

- 6.6 Housing Delivery Test 2021 demonstrates that CBC currently can demonstrate 134% delivery against its housing requirements (measured over the preceding three years), the Council's 2021 Housing Land Supply Annual Position Statement (August 2021) claims that CBC can demonstrate 5.75 years housing land supply. As such, the presumption in favour of sustainable development is not applied.
- 6.7 Housing targets are of course expressed as a minimum, therefore there is a national aim to achieve and exceed each LPA's housing targets year on year.

Compliance with Neighbourhood Plan Site Allocation WIV 29

Wivenhoe Neighbourhood Plan Requirements	Proposed Development
i. Minimum of 45 dwellings with one or two bedrooms	Requirement met: 45 (37.5%) of total units proposed will be provided as 2 bedroom units.
ii. No more than 25 dwellings shall have four bedrooms or more	Requirement met: 25 (20.8%) of total units proposed will be provided as 4 bedroom units.
iii. Dwellings should be designed for older residents or active retirees should preferably be built to the Lifetime Homes standard	Requirement met: The proposed dwellings are designed in accordance with current best practice contained in BS8300:2018 (Design of an accessible and inclusive built environment) and Building Regulations Approved Document M (2016 edition). All of the proposed affordable housing will meet Part M4 (2) Building Regulations and 39 of the market housing will too. 1 affordable unit will also meet Part M4 (3) Building Regulations.
iv. 20% of all properties to be affordable housing	Requirement met: 24 (20%) of the 120 units will be provided as affordable.
v. it can be demonstrated that the development will not have a detrimental impact on wildlife, as evidenced through an appropriate wildlife survey;	Requirement met: An Ecological Impact Assessment and Habitat Regulation Assessment have been prepared by SES and were submitted as part of the original submission. These considered that any impacts from the proposed development upon protected and notable habitats and species will be fully mitigated in line with relevant wildlife legislation and national and local planning related to biodiversity for the site will be achieved.
vi. vehicle access into the residential part of the site shall be provided from Richard Avenue;	Requirement met: Vehicle Access will be provided from Richard Avenue.
vii. 2 hectares of land to the northern part of the site adjacent to Broad Lane Sports Ground as indicated on Figure 35 shall be provided for additional sports pitches;	Requirement met: The proposals include the provision of 2 hectares of land for new sports pitches. The location of the sports pitches does not accord with Figure 35 of the Neighbourhood Plan. Taking into account the site's constraints (set out in full detail at paragraph 6.13), the location of the proposed pitches is considered wholly appropriate and logical.
viii. a dedicated footpath / cycleway along Elmstead Road to link up Broad Lane Sports Ground with the built-up part of Wivenhoe shall be provided;	Requirement met: Dedicated footpaths and cycleway has been proposed leading to the new sport pitches and with future connection points beyond the site.

<p>ix. a shared-use footpath and cycle track provided directly linking the development to the facilities at Broad Lane Sports Ground and linking with the public footpath to the south of the site;</p>	<p>Requirement met: The scheme proposes a new shared footpath and cycle way which runs to the rear of the existing houses on Alexandra Drive and through the new open space, forming part of the link around the eastern side of the town.</p>
<p>x. a contribution shall be paid towards the creation of a combined footpath/cycle track linking the new development to the public footpath (FP No. 14) from The Cross;</p>	<p>This has not been secured as the link to FP14 cannot yet be made due to a piece of intervening land that is not in the applicant's ownership. It is not therefore likely to be delivered.</p>
<p>xi. contributions towards open spaces, sports, recreational facilities and community facilities shall be required in line with Borough Policies current at the time any application for planning permission is made.</p>	<p>A financial contribution of £320,040.65 will be made to Broomgrove School Community Swimming Pool upgrade including changing room provisions.</p> <p>A financial contribution of £529,609.75 will be made for the delivery and maintenance of the football pitches.</p>

6.8 As set out in the foregoing table, the proposed development largely complies with the requirements of the Neighbourhood Plan and it is only the link to FP14 that cannot be delivered. However, in this respect, the proposals deliver enhancements to connectivity to the wider pedestrian and cycle network and the delivery of this link is not possible due to third party ownership. The slight non-conformity in this respect is not considered to outweigh the benefits of the proposal.

Departure from Neighbourhood Plan Allocation

6.9 Due to constraints which emerged during the site acquisition and pre-application process, but were not known at the stage of the Neighbourhood Plan preparation, there is some departure from the site allocation, specifically the extent of residential development which extends north of the Electricity Pylons.

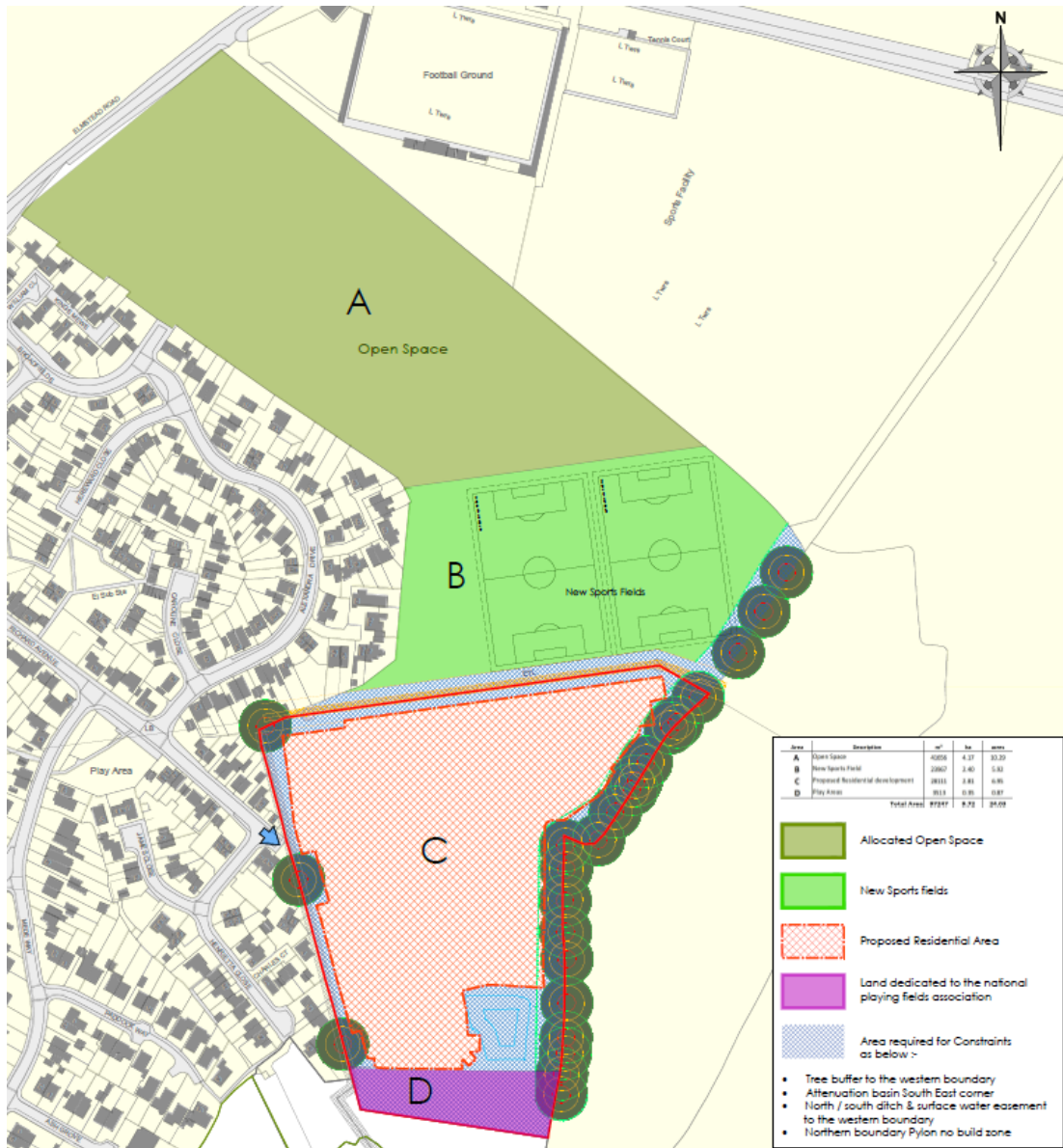


Figure 6.1: Constraints Plan (Drawing no. TW027-AP-05)

6.10 Paragraph 12 of the NPPF sets out 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. 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.” In this case the development plan is considered to be up to date; therefore it is necessary to assess whether the material considerations which we set out below indicate that the plan should not be followed. The applicant is of a clear view that material considerations do exist and these are set out below.

6.11 Post submission discussions have centred around the positioning of the residential area proposed against that identified within Figure 35 of the Neighbourhood Plan. In particular the provision of residential to the north of the east – west pylon line. In addition the re-positioning of the land for sports pitches to the north of the wider site, adjacent to the existing sports pitches was discussed. However, this is considered to be acceptable, due to the better synergy that this land would have with existing sporting facilities between Elmstead Road and Brightlingsea Road.

6.12 The residential area identified in red on Figure 35 of the WIV 29 Allocation extends to 4.06ha for a minimum of 120 dwellings. However, as set out below, the primary material consideration is that the residential area allocated is severely constrained and only 2.81ha is in fact developable. This is a significant material consideration when assessing the proposal, and the minimum development requirements stipulated in the allocation.

6.13 A Constraints Plan, prepared by JCN Architects showing the constraints is attached at **Appendix 3**. A summary of these constraints is provided below

- Along the northern boundary is it not possible to build up to the pylons due to there being a no build zone of 6 metres on either side of the outside cables.
- The eastern boundary is populated by Category A and B trees and the root protection zones extend into the residential area.
- A large proportion of the southern part of the site is dedicated to the national playing fields association (Fields in Trust), and therefore cannot be developed as it is outside of the applicant's control.
- Along the western boundary, the developable area is reduced further by no build zones along the existing water easements of 5 metres.
- In addition the engineers have advised that an attenuation basin should be provided in the south eastern corner to address the technical drainage and flood requirements which arise with residential use.

6.14 This demonstrates that Figure 35 of the Neighbourhood Plan allocation was not fully tested when the Neighbourhood plan was made, as it was not based on any technical analysis or any comprehensive legal checks to support the developability of the land.

6.15 In turn this renders the residential requirements of the Neighbourhood Plan unfeasible within the developable area (2.81 hectares) that remains. If a minimum of 120 units were considered on a smaller parcel, this would result in a minimum density of 42.7dwellings per hectare- completely at odds with the surrounding residential

character and the Council have advised that this would not be supported at officer level. This would be even more unfeasible if the necessary design requirements for residential use and the local and regional level were taken into account.

- 6.16 As such, the absence of any detailed assessment in setting the site's residential requirements is a very important material consideration.
- 6.17 On this basis, the constraints analysis has demonstrated that it would be wholly unreasonable to prevent development which doesn't strictly accord with the Neighbourhood Plan allocation.
- 6.18 We have reviewed the evidence base to the Wivenhoe Neighbourhood Plan; there is a notable absence of any evidence which explains why the residential area as shown in Figure 35 to only be to the south of the pylons. Clearly this is an arbitrary line and doesn't represent a physical boundary line. Furthermore the extensive built area to the west extends north of the pylons. This too is a very important material consideration.
- 6.19 It is important to reiterate that the proposed development complies with all other requirements of the Neighbourhood Plan through the delivery of 2 ha of sports fields, affordable housing, and the delivery of shared-use footpath and cycle tracks through the site.
- 6.20 The recent appeal decision (PINS Ref. APP/L3245/W/20/3263642) at the Land off Lowe Hill Road, Wem, Shropshire is of relevance to this site. This application sought outline planning application for the erection of up to 100 dwellings (Use Class C3) and associated access, public open space, drainage, infrastructure, earthworks and ancillary enabling works, with all matters except for access reserved. A copy of the appeal decision is attached at **Appendix 1**.
- 6.21 Similarly to the Broadfields site, the site is allocated in the Shropshire Local Plan. The site allocation had a gas main running through it, which required a 15m buffer either side (total 30m), and as such the constraints significantly reduced the developable area of the allocation. To compensate for this reduction in developable area, the proposed residential development extended beyond the boundaries of the site allocation. As a result of the site's constraints, 24% of the land subject to that appeal, lay outside of the allocation, within open countryside. Refusal by the LPA were on grounds of landscape and visual harm as well as biodiversity.
- 6.22 In allowing the appeal, the inspector concluded the following:

"The inclusion of the additional land has been suitably articulated by the appellant. Moreover, the additional landscape and biodiversity evidence ably demonstrates that the development on this part of the site has been sensitively considered. Accordingly, in my judgement, when assessed against the strict controls of local policy, and having due regard to the environment in which the development would be located, I am satisfied that there is nothing in the evidence before me to confirm that the inclusion of the westernmost parcel of land would be contrary to local policy, when taken as a whole."

6.23 This application uses 3.51 ha of land for residential development whereas the allocation allows for a larger area of 4.06ha. However, the available land south of the pylons is only 2.81 ha, so 0.7 ha is located to the north of the pylons. This equates to 17% of the area of site allocation's residential area. This is a smaller percentage than what the Inspector allowed at Wem.

6.24 The assessment by planning officers in their Committee Report concluded the following:

"It is officers' opinion that notwithstanding the elements of the scheme that do not accord with the Wivenhoe NP, the scheme still accords with the Development Plan as a whole. No material considerations point toward the refusal of this scheme that will deliver the minimum of 120 dwellings as set out in the NP.

A refusal of the scheme because of the deviations from the NP would not, in officers opinion, be sustainable at appeal and would not deliver the much needed houses (both market and affordable) and the other significant social and environmental benefits as set out above. On that basis, the planning balance tips convincingly in favour of an approval."

6.25 As mentioned, the site is allocated under Policy WIV29 of the Neighbourhood Plan identified for the delivery of a minimum of 120 homes. The proposals largely accord with the site allocation and any divergences have been robustly justified and it is considered that as with the Wem appeal the inclusion of an area north of the pylons would not conflict with the development plan when taken as a whole.

Landscape Visual Impact Assessment

6.26 A key consideration when assessing the impact between the proposals providing residential units north of the pylons and the Neighbourhood Plan allocation has been the impact on surrounding landscape. An addendum to the originally submitted Landscape and Visual Impact Assessment (LVIA) has been prepared by Arc and was submitted in support of the application. Following comments received following the submission, an amendment was made to the scheme proposals and the LVIA updated accordingly which referenced the scheme changes and the updates to the National Planning Policy Framework (NPPF).

6.27 The addendum was prepared to further consider the particular effects of the submitted scheme proposals on land to the north of the power lines and which falls outside the area previously assessed by the original LVIA. To assist in considering the visual effects of development to the north of the power line, a series of verified views which illustrate the visibility of the proposed development from 6 locations were also submitted.

6.28 To provide a summary, the proposed development will only be visible from locations within close proximity to it. Whilst the new housing will appear into parts of the view where currently there is no built form, once planting has been established, which will assist in assimilating buildings into the view, the LVIA considered that there will be no adverse effects on visual amenity.

- 6.29 In addressing the effects of the proposed layout which extends beyond the land allocated within the Neighbourhood Plan, the introduction of houses to the north of the power line will inevitably change the extent of houses visible, however again this will only be a change experienced from very limited locations. The view from the path along Elmstead Road will see the housing extend further east however this will be a limited and localised change for a short stretch of path. It is not considered that the additional houses will result in any harm to the visual amenity and from that location.
- 6.30 Similarly, whilst from some locations housing to the north of the pylons will be visible from within the Crosspit Local Nature Site, the nature of the change will be very limited and will not notably change the experience of walking through the area compared with a development that only extended to the south of the pylons.
- 6.31 The committee report provides the following summary:

“To summarise, it is very clear that the scheme as proposed will bring dwellings closer Elmstead Road than the high voltage power lines but they are still set a significant distance back from the road. There is still space for the proposed football pitches between the dwellings and the Elmstead Road junction. It will not, therefore, create a hard urban edge on the approach to Wivenhoe from this direction.”

Design Approach

Layout

- 6.32 The layout has been developed following detailed analysis of the Neighbourhood Plan requirements, the site’s context, the site’s considerable constraints, prevailing planning policy and guidance, as well as discussions with CBC officers, Town Council, stakeholders and the public.
- 6.33 The layout for the proposed scheme is based on the Neighbourhood Plan which allocates the land for residential development, open space and sports pitches and play areas to the south. However some necessary deviations are made as a result of technical constraints necessitating some residential development to the north of the electricity pylons.
- 6.34 The residential area extends to 3.51 ha, of which 0.7ha sits to the north of the pylons and 2.81 located to the south of the pylons. The residential area is off set from the sites boundaries in response to the site’s numerous constraints and to provide adequate separation with the neighbouring houses to the west.
- 6.35 A surface water attenuation basin has been positioned at the lowest point of the site in the south eastern corner and has been integrated into the landscaping scheme. The Local Wildlife Site to the east is not being developed as part of proposal.
- 6.36 2 ha of land for sports pitches are proposed at the northern end of the site adjacent to existing facility at the Broad Lane Sports Ground. The provision of new footpaths and cyclepaths on the Elmstead Road frontage

creates a safe and traffic-free route to the Broad Lane Sports Ground as well as the first stage of the strategic route to Croquet Gardens (route D in the Neighbourhood Plan). Connection to Broadfields gives existing residents traffic-free access to the new public open space, the cycleway link and the sports facilities.

6.37 The conclusions of the Committee Report states the following:

“Held that this scheme, subject to conditions suggested, has the potential to be a well-designed, beautiful development befitting this edge of settlement location and has the potential to provide significant Biodiversity Net Gain and Canopy Cover Increase.”

6.38 It is considered that the high quality design of the proposals represents a material planning consideration in this appeal case and is afforded substantial weight in the planning balance.

Appearance

6.39 Following discussions with design officers at CBC, the appearance of the proposed scheme was updated to be more contemporary in style, but using traditional typologies.

6.40 This is in response to the more modern character of the surrounding area of northern Wivenhoe. The proposed scheme will create a transition between post-war, suburban streets seen in the residential dwellings along Richard Avenue to the west of the site and the open land uses and countryside that enclose the town to the north and east of the site. Traditional building forms using aesthetic features such as pitched roofs, projecting porches, brickwork detailing and varying window styles have been incorporated into the proposed dwellings.

6.41 The proposed materials are traditional and includes variation in facing bricks, roof tiles and other finishes, enlivened by boarding, render, bay windows, a detailed roofscape, chimneys and door canopy detailing. Subtle variations between materials and their boundary treatments are employed across the site.

Density

6.42 A density requirement is not specified in the Neighbourhood Plan allocation, however, it states that 4.06 hectares of the land is suitable for the provision of a minimum of 120 dwellings. This equates to a minimum density of 30 dwellings per hectare for the land allocated for residential development.

6.43 The proposed development will have a residential density of 34 dwellings per hectare (dph) with 120 dwellings on only 3.5 hectares of land. The scheme has a slight increase in density against the baseline set by the Neighbourhood Plan. It is considered that to provide 120 dwellings on 2.81 hectares of land would not be an appropriate response to the site's constraints.

6.44 The Committee Report describes this minor departure as *‘nominal as the proposal is to be provided on a smaller area of land than the neighbourhood plan allows for.’*

Landscaping Approach

- 6.45 The landscape proposals for the development have been designed by Andrew Hastings Landscaping and full details of the landscaping proposals are set out in the Landscape Masterplan and the Design and Access Statement submitted in support of the application.
- 6.46 The landscape strategy has been a key element of the design process in order to ensure that the landscaping proposals compliment the built architecture proposed for the site and enhance its ecological benefit and biodiversity. The landscaping proposals comprise three elements: private amenity spaces, public open spaces and 2ha of land for sports pitches. This approach incorporates the principles established by the Neighbourhood Plan.
- 6.47 The hard and soft landscaping creates the setting for the buildings and highlights the public realm on the street frontages, through the traffic-free route around the eastern side of the town and in the new open space as an integral part of the appearance of the proposed development.
- 6.48 Planting proposals within the residential sections of the site have been developed to reinforce the street scene as well as to create individual identity within different areas of the scheme. In this respect, the street tree planting and frontage hedgerows provide the landscape framework along the primary and secondary routes and spaces. Different streets are assigned different tree species as well as single species hedges. This allows identifiable changes in the street scene and a sense of place to be identified. Along the tertiary routes, as well as within the smaller housing cells, peripheral areas of the scheme and where built form abuts open space, a pallet of shrubs, ornamental grasses and herbaceous planting has been selected to create the individuality and variation in texture, colour and form. This also reflects a change to either smaller scale or a softer character of development type.
- 6.49 As part of post submission discussions with CBC, the landscape proposals were updated showing show a canopy spread of tree species at 25 years and further information has been provided on the tree pits, planting depths and specifications.
- 6.50 During the consultation process, the Arboriculture Planner had no objections subject to tree protects and canopy cover increase via a landscaping condition.
- 6.51 Representation from the public also raised concerns that fences should be provided in dog walking areas to contain dogs. The Committee Report confirms that this could also be dealt with via a landscaping condition.
- 6.52 Overall, the Committee Report raised no concerns to the proposed landscaping and it will provide a substantial planning benefit.

Residential Component

Residential Mix

6.53 With regards to the proposed housing mix the Committee Report states that it does meet the requirements of the Neighbourhood Plan and is therefore acceptable. The proposals meet the identified housing need on a site allocated for housing, therefore this represents a material planning consideration in this appeal. Substantial weight is afforded to this in the planning balance.

Affordable Housing

6.54 In terms of affordable units, the proposed housing mix comprises of 96 private sale units and 24 affordable units, which equates to 20% on-site affordable housing provision as in accordance with the Neighbourhood Plan. The affordable housing is to be provided as shared ownership, and affordable rent. The proposal delivers a tenure split of 79:21 in favour of Affordable Rent.

6.55 The Committee Report confirms that this level and type of provision is policy compliant. Therefore the proposals if approved would provide substantial planning benefit.

Residential Quality

6.56 During the consultation process, the Council requested 5% (1) of affordable homes is designed to meet Part M4 Cat (3) (2) or Part M4 Cat 3 (2) (b).

6.57 All of the proposed affordable housing will meet Part M4 (2) Building Regulations and 39 of the market housing will too. 1 affordable unit will also meet Part M4 (3) Building Regulations and will be a fully wheelchair accessible home. This complies with planning policy and should be afforded substantial weight in the planning balance

Highways

6.58 In accordance with the requirements of WIV the scheme has an access from Richard Avenue.

6.59 The Neighbourhood Plan also provides a number of other highway criteria. These are as follows:

Criteria	Committee Report
<i>viii. a dedicated footpath / cycleway along Elmstead Road to link up Broad Lane Sports Ground with the built-up part of Wivenhoe shall be provided;</i>	Dedicated footpaths and cycleway has been proposed leading to the new sport pitches and with future connection points beyond the site.

<p><i>ix. a shared-use footpath and cycle track provided directly linking the development to the facilities at Broad Lane Sports Ground and linking with the public footpath to the south of the site;</i></p>	<p>The scheme proposes a new shared footpath and cycle way which runs to the rear of the existing houses on Alexandra Drive and through the new open space, forming part of the link around the eastern side of the town.</p>
<p><i>x. a contribution shall be paid towards the creation of a combined footpath/cycle track linking the new development to the public footpath (FP No. 14) from The Cross;</i></p>	<p>This has not been secured as the link to FP14 cannot yet be made due to a piece of intervening land that is not in the applicant's ownership. It is not therefore likely to be delivered.</p>

- 6.60 The scheme and the accompanying Transport Statement have been assessed by the Highway Authority and they have no objection to the scheme subject to the proposed conditions.
- 6.61 The Committee Report confirms the above by stating the following ‘Given that the Highway Authority have no objections to the proposed development in terms of transport and highway impact, and that a range of mitigatory measures can be secured, it is concluded that it cannot be demonstrated that the proposed development would have an unacceptable or severe impact on the road network. A refusal on these grounds is not considered to be justified or sustainable at appeal.’
- 6.62 The proposed highways improvements including the new connections to the recreation ground and the north south and east-west connections away from busy main roads are afforded significant weight in the planning balance.

Flooding and Drainage

- 6.63 The site is located in Flood Zone 1, at low risk from flooding. The Committee Report confirms that the principle of residential and other development on the site is considered acceptable through the allocation of the site in the Neighbourhood Plan.
- 6.64 A Flood Risk Assessment has been prepared by Stormor and submitted with this application. The assessment considered that the site would not be at risk of flooding from fluvial sources, sewers, groundwater, or artificial sources.
- 6.65 The Flood Risk Assessment also outlines the principles of a drainage strategy. There is a public surface water sewer running adjacent to the eastern site boundary which connects to a 610mm diameter public surface water sewer to the south east of the site. There are public foul water sewers within Henrietta Close and Richards Avenue, to the west of the site. These sewers connect to the pumping station at the southern end of Henrietta Close The proposed surface water drainage strategy for the site demonstrates a system of SuDS and attenuation features to provide sufficient storage to avoid flooding within the site during the 1 in 100 year storm event + 40% allowance for climate change.

- 6.66 With regards to consultation comments received on the application, Anglian Water had commented on earlier iterations of the drainage strategy and were satisfied with the foul water but not the surface water approach. The strategy was amended and the LLPA is now satisfied. On that basis, the site will therefore not be at risk of flooding or increase the flood risk to others as a result of the proposed development. The Committee Report confirms that on the basis that the full details will be conditioned at the LLFA's request, this is not held to be a matter that warrants a refusal of this application.
- 6.67 The proposed flood risk and drainage strategy will provide a benefit to the area and therefore is provided significant weight in the planning balance.

Energy and Sustainability

- 6.68 Criterion (iv) of the WIV 26 site allocation states that development is encouraged to incorporate, at the build stage, technologies such as solar panels, which reduce reliance on fossil fuels.
- 6.69 An energy statement and addendum, prepared by Energist, was submitted in support of the application.
- 6.70 A combination of demand-reduction measures and energy-efficiency measures will deliver the Applicant's target for on-site reduction in energy. The Development has been designed to generate a total reduction in energy of 13.1% over the TER ADL 2013.
- 6.71 The strategy involves a fabric first approach involving measures such as Energy-efficient building fabric and insulation to all heat loss floors, walls and roofs; Efficient-building services including high-efficiency heating systems; and Decentralised Mechanical Ventilation Extract System.
- 6.72 In addition, a total of 84kWp Photovoltaic Array will be installed across the site. The precise location of the PV's will be dealt with via condition to ensure they are installed on the most appropriate roofs for solar gain.
- 6.73 The scheme adopts and integrates a very wide range of sustainability principles into the development from construction stage through to operational stage. This is afforded significant weight in the planning balance;

Noise

- 6.74 A noise impact assessment, prepared by Ardent, was submitted as part of the application. The site risk of noise impact under overheating conditions within properties has been considered in accordance with AVO Guidance. The assessment results in a negligible to low risk of noise impact during the day and natural window ventilation can be used to control overheating.
- 6.75 For the majority of the proposed properties there are no specific noise mitigation requirements. Properties on the north east extent of the site and those facing the development roads should be able to close the windows to achieve suitable internal sound levels.

6.76 With regard to noise, the Committee Report states the following *'It is accepted that the scheme will intensify the use of the access point and in turn that will cause an increase in noise and disturbance to existing dwellings. This is an inevitable consequence for development of this type. The NP is clear that the site should be served via the access point that is proposed and therefore in this instance the increase in noise and disturbance is held to be acceptable.'*

Air Quality

6.77 The site is outside of any Air Quality Management Area and will not generate significant impacts upon the zones. The scheme has been accompanied by an Air Quality Assessment and that considered the potential air quality impacts associated with the proposed residential development.

6.78 The Air Quality Assessment confirms that there is the potential for dust and PM10 impacts during the construction phase, however, with the proposed mitigation measures in place secured via a construction management plan condition, these impacts will be not significant.

6.79 The impact of additional emissions associated with the development on local air quality was assessed and is considered not significant. This is based on the fact that concentrations will be well below the relevant objectives and impacts at each receptor modelled will be negligible.

6.80 The impact of local air quality on future residents of the development was also considered. It is considered that air quality for future residents will be good and no mitigation is required. Overall the AQA concluded that there are no air quality constraints to the proposed development which is in accordance with local and national policy and guidance.

Archaeology

6.81 As part of the application archaeological trial trenching evaluation was completed in line with CBC's requirements.

6.82 The evaluation revealed archaeological features dating to the Middle Iron Age, Late Iron Age, Roman and medieval/post-medieval periods, largely concentrated in the southern half of the site. This included cremated human remains, and at least one ditched enclosure.

6.83 The archaeological evaluation submitted was reviewed by the Council's in house Archaeologist. It has been confirmed that there are no grounds to consider refusal of permission in order to achieve preservation in situ of any important heritage assets.

Ecology & Biodiversity

6.84 A Preliminary Ecological Appraisal (PEA) was undertaken by SES and submitted in support of the application.

- 6.85 The surveys undertaken demonstrated that the site supports a foraging/commuting bat assemblage of local to district value, a breeding and wintering bird assemblage of local value, and a low population of grass snake of site value. Hedgehog are also known to be present on site.
- 6.86 Mitigation and enhancement measures are proposed for these species, including precautionary working methods, retention and protection of existing habitats and new habitat creation. This will be secured via condition.
- 6.87 The site has a number of ecological sensitivities. The Committee Report confirms that Wivenhoe Cross Pit LoWS lies partially within the site and is directly adjacent to the proposed development area, direct impacts on this site such as pollution events, noise and lighting disturbance during construction are possible.
- 6.88 The PEA provides a number of recommendations to mitigate against their adverse impacts, guided by the production of a Construction Ecology Management Plan (CEMP), which has been recommended to be secured via condition. The mitigation measures include retaining the existing treeline boundary feature between the arable field and the LoWS and the layout design includes a minimum 10m buffer between the tree line and the edge of the built development. A further recommendation was made that a biodiversity Mitigation & Enhancement Strategy (BMES) is secured via planning condition. The BMES will include provisions for the LoWS area, detailing measures to minimise disturbance to sensitive features and enhance the site for wildlife long term.
- 6.89 The scheme, and the wintering bird survey have been independently assessed by Place Services ecologists who are now satisfied with the scheme subject to the conditions noted above.
- 6.90 The Committee Report states the following *'Through implementing the recommended mitigation and enhancements, it is considered that all significant negative impacts from the proposed development upon protected and notable habitats and species will be fully be mitigated in line with relevant wildlife legislation and national and local planning policy related to biodiversity.'*
- 6.91 With regards to biodiversity, a Biodiversity Net Gain calculation, prepared by SES Ecology was provided as part of the application.
- 6.92 The net gain assessment evidences a prospective future biodiversity net gain of 2.66 habitat units across the wider site, a net positive change of 35.88%. This significantly exceeds the 10% future mandatory requirement set to be brought into legislation under the forthcoming Environment Bill, evidencing the high biodiversity value offered by the proposed development scheme as a whole. This represents a substantial benefit in the planning balance.

Trees & Canopy Cover

- 6.93 A Tree Survey, Arboricultural Impact Assessment, Preliminary Arboricultural Method Statement & Tree Protection Plan were submitted in support of the application. The tree survey confirmed that there are 23 individual trees, 15 groups of trees, 4 areas of trees and 7 hedges on the site. It advises that these features were found to be of mixed condition and age providing a variety of amenity benefits.
- 6.94 The existing trees on site will be retained and protected, save for some loss at the proposed access point, so the canopy cover from these trees will not change significantly, instead new planting will increase existing canopy cover.
- 6.95 The internal area of the site is currently vacant with no tree cover for the most part, only a number of trees around the edges. The Committee Report confirmed the submitted information demonstrated that a 10% canopy increase can easily be achieved with new tree planting incorporated in a soft landscape design, that can be conditioned as part of a planning consent with the scheme.

Contamination

- 6.96 A contaminated land assessment and Ensafe letter with additional gas testing supporting evidence has been proved to support this application carried out by Dr Melissa Morales.
- 6.97 The report concludes that no potential sources of contamination were identified at the application site, and as such no further recommendations were given or works necessary. The Council's inhouse Contaminated Land officer agreed with these findings and subject to an unexpected contamination condition is satisfied with the scheme.

Health Impact Assessment

- 6.98 A Health Impact Assessment prepared by Hodkinson was submitted in support of the application. This assessment concludes that the proposed development will benefit from features in its design, and its location, that will positively influence the health of the occupants as well as to local residents. It is also not considered to have any significant adverse impact on the provision of healthcare or educational facilities within the local or wider area.
- 6.99 The NHS provided their comments on the application and they have not sought any financial contributions or mitigation measures.

B.) Do The Other Material Considerations Indicate A Conclusion That Supports The Development Plan Or Overrides The Presumption In Favour Of The Development Plan?

- 6.100 The NPPF states at paragraph 2 that "*planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise*" and goes on to state at paragraph 3 that the "*Framework should be read as a whole.*"

6.101 Paragraph 7 outlines that the purpose of the planning system is to contribute towards the achievement of sustainable development. The Framework outlines that *“at a very high level, the objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs”*. So that sustainable development is positively pursued at the heart of the framework, there is a presumption in favour of sustainable development (paragraph 10-11).

6.102 Paragraph 12 goes on to advise 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. 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”*.

6.103 In this case, the main consideration is simple: the number of units in the area allocated to provide residential dwellings is not deliverable. The above has clearly demonstrated that the site’s constraints were not effectively evidenced during the preparation of the Neighbourhood Plan and have since emerged as a result of the application being prepared for the site and technical and robust assessments having been undertaken by experts. .

7. Planning Conditions & Planning Obligations

7.1. The appellant has reviewed the Planning Committee report, statutory and stakeholder consultation comments received on the application at the point which the appeal was lodged. They consider that the following conditions could be used to secure detailed elements of the proposal, should the Inspector be minded to grant planning permission. Full details will be set out in the Statement of Common Ground in agreement with the Council.

- Construction traffic management plan
- Details of footways and cycleways
- Delivery of ecological mitigation and enhancement measures
- Construction environmental management plan for biodiversity
- Farmland bird mitigation strategy
- Biodiversity mitigation and enhancement strategy
- Wildlife sensitive lighting design scheme
- Landscape and ecological management plan
- Site waste management plan
- Surface water drainage scheme and system maintenance
- Flood mitigation measures
- Solar Panels
- Landscape management plan
- Details of landscaping works
- Tree and hedgerow protection
- Construction method statement
- Limit to peak hour for construction traffic
- Hours of work
- Restriction of bonfires
- Provision of electric vehicle charging points
- Programme of archaeological works
- Agreement of materials
- Architectural detailing
- Details of utilities
- Details of boundary treatments
- Details of cycle storage
- Matters relating to contamination
- Street name signs
- Removal of PD rights

8. S106 Planning Obligations

- 8.1. The Appellant intends to enter into a Section 106 Agreement with CBC in respect of the obligations required to support of the delivery of the scheme.
- 8.2. At this stage, the following Heads of Terms have been agreed:

- **Affordable Housing;**

Financial Obligations

- **Community**
 - £320,040.65
 - This will be put towards upgrading 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.
- **Parks & Recreation**
 - Football pitches land is being transferred to Council for Football Pitches
 - £529,609.75
 - £390,109.77 – for delivery of Football Pitches
 - £139,500 – Maintenance of Football Pitches
- **Education**
 - Secondary travel for Education - £119,472.00
 - Primary School Travel contribution: £796,244.40,
 - Early Years and Childcare contribution (10.80 places) at £17,268.00 per place, PUBSEC index-linked from January 2020;
- **Archaeology**
 - £15,153
 - £14,400 for museum display case, design and display material
 - £753 for enhancement of the Colchester HER

9. Conclusion and Summary

9.1. This Appeal Statement has assessed the planning considerations arising from the proposals against the prevailing planning policy framework and has demonstrated that the scheme complies with the relevant national and local planning policies and guidance when read as a whole.

9.2. On the basis of the above it is respectfully requested that the appeal is allowed, and planning permission is granted.

9.3. This Appeal Statement has been prepared to support the appeal made by Savills on behalf of Taylor Wimpey UK Limited, following the refusal of the planning application LPA Ref: 210965, a proposal for the comprehensive redevelopment of the site to provide:

“Construction of residential development, access, landscaping, public open space, and associated infrastructure works”

9.4. The Appellant is seeking the comprehensive redevelopment of the site to provide high quality residential-led development in a design-led manner which makes effective use of the site, and bring forward much needed housing for the Borough.

9.5. The appellant has clearly demonstrated that the Neighbourhood Plan allocation was not fully tested when the Neighbourhood plan was made, as it was not based on any technical analysis or any comprehensive legal checks to support the developability of the land. In turn this renders the residential requirements of the Neighbourhood Plan unfeasible within the developable area (2.81 hectares) within the residential allocation that remains.

9.6. The above assessment has demonstrated that the following material considerations, and planning and public benefits will be delivered in the short term, as well as over the lifetime of the development, demonstrating the delivery of a wholly sustainable development. Individually each of the benefits are afford significant or substantial weight in the planning balance. Collectively they outweigh the development of residential units outside the settlement boundary:

- Site is located in a **highly sustainable location** and can be delivered now;
- Delivery **120 new homes** which will contribute towards CBC’s housing targets – Substantial weight in the planning balance;
- Provision of **20% affordable housing** in accordance with the site allocation, making a substantial contribution towards pressing housing need and assisting current wait lists – Substantial weight in the planning balance;

- Implementation of a **79:21 tenure** split between London Affordable Rent and Shared Ownership respectively to meet local housing need – Substantial weight in the planning balance;
- Delivery of a **varied mix of housing sizes and typologies** creating housing choice opportunities for first time buyers through to larger families; which accords with the requirements of the site allocation – Substantial weight in the planning balance;
- A mixed housing supply will result in a better labour and employment mix across CBC – Moderate weight in the planning balance;
- A detailed and rigorous contextual led approach has been taken to ensure that the design of the site in terms of layout, scale and architecture results in a **high quality residential development** – Substantial weight in the planning balance;
- **Extremely high levels of amenity and quality** will be achieved for residents and visitors to the site, including **97% dual aspect** – Substantial weight in the planning balance;
- A substantial quantum of new publically accessible **high quality realm and landscaping** will be provided, including **very generous tree and soft landscaping** and multiple **public art** opportunities – Substantial weight in the planning balance;
- **New connections to the recreation ground** to and from the site including **improvements to the recreation ground** which could comprise habitat creation, new public facilities improved sport opportunities (subject to legal agreement and discussions with LBC) – Substantial weight in the planning balance;
- New pleasant **north south and east-west connections** away from busy main roads will be delivered – Significant weight in the planning balance;
- **Flood risk and drainage controlled** appropriately through topographical and engineered design, to be benefit of the wider area – Significant weight in the planning balance;
- Achieving a **Biodiversity Net Gain score of 35.88%**. – Substantial weight in the planning balance
- Adoption of a very **wide range of sustainability principles** are integrated into the development, from construction stage through to operational stage – Significant weight in the planning balance;
- An appropriate package of **Section 106 obligations** – Significant weight in the planning balance;

9.7. This Appeal Statement has assessed the planning considerations arising from the proposals against the prevailing planning policy framework and has demonstrated that the scheme complies with the relevant national and local planning policies and guidance when read as a whole.

Appeal Statement

Land at, Broadfields, Wivenhoe, Colchester



9.8. On the basis of the above it is respectfully requested that the appeal is allowed, and planning permission is granted.

Appeal Statement

Land at, Broadfields, Wivenhoe, Colchester



Appendix 1 Decision Notice



Notice of Planning Decision

TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) ORDER
(ENGLAND) ORDER 2015

In pursuance of the powers exercised by it as District Planning Authority this Council, DOES HEREBY GIVE NOTICE of its decision to REFUSE PERMISSION for the development detailed below.

APPLICATION NO: 210965

APPLICATION DATE: 8 April 2021

PROPOSAL: Construction of residential development, access, landscaping, public open space, and associated infrastructure works

LOCATION: Land at, Broadfields, Wivenhoe, Colchester

APPLICANT: Taylor Wimpey Uk Ltd, C/O Agent

Reason(s) for refusal

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 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).

IMPORTANT – ATTENTION IS DRAWN TO THE NOTES ATTACHED

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).

PLEASE NOTE: a site notice was erected in a publicly visible location at the site. Colchester Borough Council would appreciate your co-operation in taking the site notice down and disposing of it.

Date: 14 June 2022

Signed:



Karen Syrett
Place and Client Manager

Positivity Statement

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and determining the application within a timely manner,

clearly setting out the reason(s) for refusal, allowing the applicant the opportunity to consider the harm caused and whether or not it can be remedied by a revision to the proposal. The Local Planning Authority may be willing to provide pre-application advice in respect of any future application for a revised development provided, however this is a discretionary service and we do charge for such advice. Any request for further assistance must be submitted in accordance with our pre-application enquiry procedures that are set out on our website www.colchester.gov.uk/planning along with our current fees and other helpful information.

NOTES ON YOUR DECISION NOTICE – PLEASE READ THE BELOW IN FULL

Building in Accordance with the Plans

Planning permissions are given on the basis of the details submitted. If you plan to make any changes whatsoever to deviate from the approved plans then you are strongly advised to liaise with Colchester Borough Council Planning Services prior to undertaking any works. You may require a new planning application or a variation to your existing permission. Failure to construct in accordance with the plans could lead to potential Enforcement Action.

Requirement to Comply With Your Conditions

Please read all of your conditions carefully. All of your conditions must be complied with. Failure to comply in full with a planning condition placed upon your permission may result in potential Enforcement Action. Planning conditions require certain things to be done at certain times, often prior to the commencement of any works. If you are in any doubt as to the requirements of your conditions please liaise with Colchester Borough Council Planning Services.

Building Regulations

Did you know that this permission may require Building Regulations approval? For further information please contact the building control team on 01206 282436, or by emailing building.control@colchester.gov.uk or by visiting our website www.colchester.gov.uk/buildingcontrol

Archaeological Advice

Did you know that Colchester enjoys a significant rich and diverse archaeological heritage? To read how we aim to protect our wonderful heritage please visit our website <http://www.colchester.gov.uk/article/13595/Archaeology-and-the-planning-process>

Appeals to the Secretary of State

If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990.

If you want to appeal against your local planning authority's decision then you must do so within the timescales listed below:

- For Householder Appeals – within 12 weeks of the date of the decision notice
- For Minor Commercial Appeals – within 12 weeks of the date of the decision notice
- For Advertisement Appeals – within 8 weeks of the date of the decision notice
- For all other appeal types – within 6 months of the date of the decision

Notwithstanding the above, if the planning application relates to the same (or substantially the same) land and development as is already the subject of an enforcement notice the appeal must be made within 28 days of the date of this notice and not the period set out above.

If an enforcement notice is served relating to the same (or substantially the same) land and development as in your application and if you want to appeal against your local planning authority's decision on your application, then you must do so within 28 days of the date of service of the enforcement notice, or within the relevant period set out above, from the date of this notice, whichever period expires earlier.

Appeals can be made online at: <https://www.gov.uk/planning-inspectorate>.

If you are unable to access the online appeal form, please contact the Planning Inspectorate to obtain a paper copy of the appeal form on tel: 0303 444 5000.

If you intend to submit an appeal that you would like examined by public inquiry, then you must notify the Local Planning Authority and Planning Inspectorate (inquiryappeals@planninginspectorate.gov.uk) at least 10 days before submitting the appeal. Further details are on GOV.UK.

The Secretary of State can allow a longer period for giving notice of an appeal but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.

The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

Rights of Way

The applicant is reminded that the grant of planning permission does not entitle them to obstruct a Right of Way. If it is necessary to stop up or divert a footpath or bridleway in order to enable the development to be carried out, they should, on the receipt of planning permission, apply without delay to the Local Planning Authority for an order under section 257 of the Town and Country Planning Act 1990. In the case of any other right of way, application should be made to the Secretary of State for an order under section 247 of the Act. In either case development shall not be started until a decision has been taken on the application.

Purchase Notice

If either the Local Planning Authority or the Secretary of State refuses permission to develop land, or grants it subject to conditions, the owner may claim that they can neither put the land to a reasonable beneficial use in its existing state, nor can they render the land capable of a reasonably beneficial use by the carrying out of any development which has been, or would be, permitted.

In these circumstances, the owner may serve a purchase notice on the Council in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Planning Act 1990, or section 32 of the Planning (Listed Buildings and Conservation Areas) Act 1990, as appropriate.

You are advised to seek professional advice before embarking on the serving of a purchase notice.

Compensation

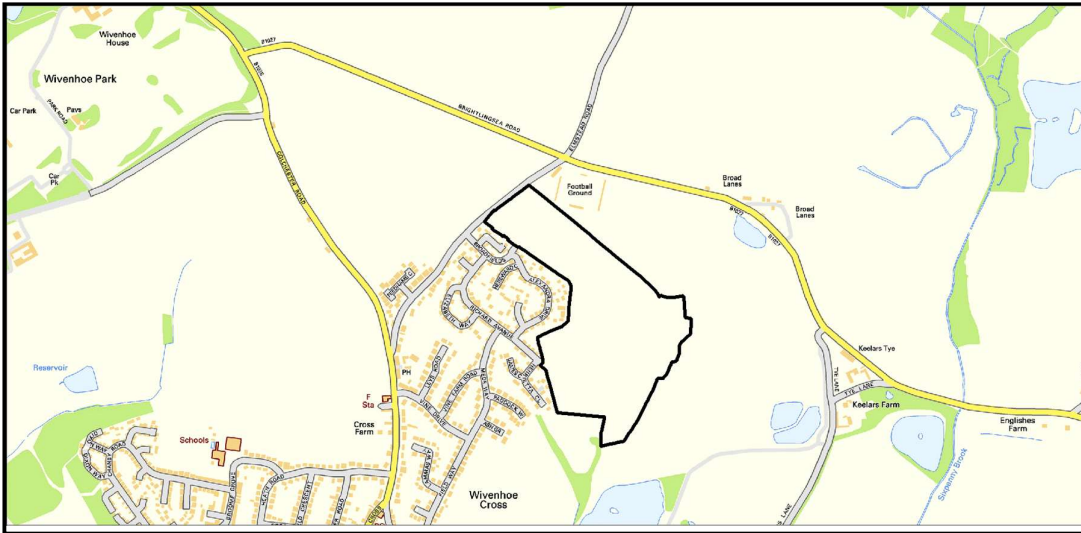
In certain circumstances compensation may be claimed from the Local Planning Authority if permission is refused, or granted subject to conditions, by the Secretary of State on appeal or on reference of the application to him.

Appeal Statement

Land at, Broadfields, Wivenhoe, Colchester



Appendix 2 Committee Report



The Ordnance Survey map data included within this publication is provided by Colchester Borough Council of Rowan House, 33 Sheepen Road, Colchester CO3 3WG under licence from the Ordnance Survey in order to fulfil its public function to act as a planning authority. Persons viewing this mapping should contact Ordnance Survey copyright for advice where they wish to licence Ordnance Survey map data for their own use. This map is reproduced from Ordnance Survey Material with the permission of Ordnance Survey on behalf of the Controller Of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Crown Copyright 100023706 2017

Item No: 7.1

Application: 210965

Applicant: Taylor Wimpey Uk Ltd

Agent: Savills

Proposal: Construction of residential development, access, landscaping, public open space, and associated infrastructure works

Location: Land at, Broadfields, Wivenhoe, Colchester

Ward: Wivenhoe

Officer: James Ryan

Recommendation: Approval

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee because it was called in by Cllr Mark Cory for the following reason:

This application contravenes numerous Wivenhoe Neighbourhood Plan policies.

In a following representation he noted:

Matters relating to the Wivenhoe Neighbourhood Plan site location boundaries, as well as associated issues with traffic and transport impacts; the access road; Elmstead Road impacts including Broad Lane junction; cycle path position; adjacent landownership must be confirmed as public (Councils) or Fields in Trust; quality of housing and environmental standards; ensuring affordable homes at 30%; and a localised priority scheme for Wivenhoe.

2.0 Synopsis

- 2.1 The key issues for consideration are the compliance with the Wivenhoe Neighbourhood Plan. Other issues include flood risk and drainage; impacts on ecology, highways, heritage, landscape and trees; and design. Matters of contamination, amenity, and climate change are also considered, along with other material planning considerations
- 2.2 The proposed development has been assessed in line with both current and emerging planning policy and the site allocation in the Wivenhoe NP, with the benefit of consultation responses and representations from third parties. It is acceptable that there are elements of the scheme that do not comply with the Wivenhoe NP policy, in particular the use of land to the north of the power lines for residential use.
- 2.3 Consideration of the planning benefits of the proposed development has resulted in a balanced judgement which concludes that the benefits of the scheme, in particular the market housing provision, the affordable housing provision and the ample on-site open space and provision of sports pitches, strongly outweighs the lack of complete compliance with the NP. On that basis, the application is subsequently recommended for approval subject to a number of planning conditions, together with a s106 agreement securing developer contributions/obligations.

3.0 Site Description and Context

- 3.1 The whole site extends to 11.58 hectares, and it is located within Wivenhoe at the northeastern edge of the town. The site is approximately 2 km from southeastern edge of Colchester and lies to the south of Broad Lane Sports Ground and Elmstead Road. The site comprises of undeveloped open land and the eastern section of the site forms part of the non-statutory designated Wivenhoe Cross Pit Local Wildlife Site (LoWS) which is not to be developed.

- 3.2 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.
- 3.3 The site is not subject to historic designations, but the eastern part of the site is a local wildlife area. The site is located in Flood Zone 1.
- 3.4 Access to the site is taken from Richard Avenue, one of the roads that makes up the relatively spacious post war housing area in this section of northern Wivenhoe.

4.0 Description of the Proposal

- 4.1 The scheme proposes the construction of residential development (Use Class C3), access, landscaping, public open space, and associated infrastructure works. In total, 120 dwellings are proposed.

5.0 Land Use Allocation

- 5.1 The site is agricultural land, now uncropped. The LoWS is a wildlife area and will remain so.

6.0 Relevant Planning History

- 6.1 There is no relevant planning history.

7.0 Principal Policies

- 7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) must be taken into account in planning decisions and is a material consideration, setting out national planning policy. Colchester's Development Plan is in accordance with these national policies and is made up of several documents as follows below.

7.2 Local Plan 2017-2033 Section 1

The shared Section 1 of the Colchester Local Plan covers strategic matters with cross-boundary impacts in North Essex. This includes a strategic vision and policy for Colchester. The Section 1 Local Plan was adopted on 1 February 2021 and is afforded full weight. The following policies are considered to be relevant in this case:

- 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

- 7.3 Appendix A of the Section 1 Local Plan outlines those policies in the Core Strategy Focused Review 2014 which are superseded. Having regard to the strategic nature of the Section 1 Local Plan, policy SD2 of the Core Strategy is fully superseded by policies SP5 and SP6 of the Section 1 Local Plan. Policies SD1, H1 and CE1 of the Core Strategy are affected in part. The hierarchy elements of policies SD1, H1 and CE1 remain valid, as given the strategic nature of policies SP3, SP4 and SP5 the only part of the policies that are superseded is in relation to the overall requirement figures.
- 7.4 The final section of Policy SD1 which outlines the presumption in favour of sustainable development is superseded by policy SP1 of the Section 1 Local Plan as this provides the current stance as per national policy.
- 7.5 All other Policies in the Core Strategy, Site Allocations and Development Management Policies and all other adopted policy which comprises the Development Plan remain relevant for decision making purposes.
- 7.6 The adopted Colchester Borough Core Strategy (adopted 2008, reviewed 2014) contains local strategic policies. Particular to this application, the following policies are most relevant:

- SD1 - Sustainable Development Locations
- SD2 - Delivering Facilities and Infrastructure
- SD3 - Community Facilities
- H1 - Housing Delivery
- H2 - Housing Density
- H3 - Housing Diversity
- H4 - Affordable Housing
- UR2 - Built Design and Character
- PR1 - Open Space
- PR2 - People-friendly Streets
- TA1 - Accessibility and Changing Travel Behaviour
- TA2 - Walking and Cycling
- TA3 - Public Transport
- TA4 - Roads and Traffic
- TA5 - Parking
- ENV1 - Environment
- ENV2 - Rural Communities
- ER1 - Energy, Resources, Waste, Water and Recycling

- 7.7 The adopted Colchester Borough Development Policies (adopted 2010, reviewed 2014) sets out policies that apply to new development. Specific to this application are policies:

- DP1 Design and Amenity
- DP2 Health Assessments
- DP3 Planning Obligations and the Community Infrastructure Levy
- DP4 Community Facilities
- DP13 Dwelling Alterations, Extensions and Replacement Dwellings
- DP14 Historic Environment Assets
- DP15 Retention of Open Space and Indoor Sports Facilities

DP16 Private Amenity Space and Open Space Provision for New Residential Development
DP17 Accessibility and Access
DP18 Transport Infrastructure Proposals
DP19 Parking Standards
DP20 Flood Risk and Management of Surface Water Drainage
DP21 Nature Conservation and Protected Lanes
DP25 Renewable Energy

7.8 Some “allocated sites” also have specific policies applicable to them. The adopted Site Allocations (adopted 2010) policies set out below should also be taken into account in the decision making process:

N/A

7.9 The Neighbourhood Plan for Wivenhoe is very relevant to this scheme. This forms part of the Development Plan in this area of the Borough.

7.10 Submission Colchester Borough Local Plan 2017-2033:
The Section 1 Local Plan was adopted on 1 February 2021 and is afforded full weight. The Section 2 Emerging Local Plan is at an advanced stage having recently been found sound following examination. Section 2 will be afforded significant weight due to its advanced stage.

Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to:

1. The stage of preparation of the emerging plan;
2. The extent to which there are unresolved objections to relevant policies in the emerging plan; and
3. The degree of consistency of relevant policies to the policies in the Framework.

The Emerging Local Plan is at an advanced stage and is, therefore, considered to carry significant weight in the consideration of the application.

7.11 Regard should also be given to the following adopted Supplementary Planning Documents (SPD):

The Essex Design Guide
External Materials in New Developments
EPOA Vehicle Parking Standards
Backland and Infill
Affordable Housing
Community Facilities
Open Space, Sport and Recreation
Sustainable Construction
Cycling Delivery Strategy
Sustainable Drainage Systems Design Guide
Street Services Delivery Strategy
Planning for Broadband 2016
Managing Archaeology in Development.
Developing a Landscape for the Future
ECC’s Development & Public Rights of Way

8.0 Consultations

8.1 The stakeholders who have been consulted and who have given consultation responses are as set out below. More information may be set out on our website.

8.2 Anglian Water

The foul drainage from this development is in the catchment of Colchester Water Recycling Centre that will have available capacity for these flows.

Objection regarding surface water – please see relevant section of main report below.

8.3 Arboriculture Planner

No objection subject to tree protection and canopy cover increase via landscaping condition.

8.4 Cadent Gas

No objection.

8.5 Contaminated Land

The findings of the investigation seem reasonable and are acceptable to the EP Team. No further information is required however please apply an unexpected contamination condition.

8.6 Environmental Protection

No objection, request conditions.

8.7 Essex County Fire and Rescue

Essex County Fire and Rescue Service is not satisfied with the proposals for the following reasons:

- Access to numerous plots, including plot NT42 to the bottom of the plan cannot be accessed by a fire service appliance within the required 45m.
- The turning circles provided for plots NT42, PA25a, and PA25b do not meet the turning circle requirement as outlined in the table below.
- The fire appliance tracking as shown on the submitted plans, shows the fire appliances making contact with building CP6.

A possible solution is to consider sprinklers in the affected premises.

Officer response:

The applicants have confirmed that they will meet the requirements of the Building Regulations. They will therefore fit a sprinkler system to any of the plots that require it to meet the building regulations at that detailed design stage. This is held to be acceptable.

8.8 Essex Minerals

By virtue of the site being adopted through the Wivenhoe Neighbourhood Plan under proposed site WIV29 it falls outside of that part of Policy S8 which concerns land in Mineral Safeguarding Areas. No potential conflict is assessed between the proposed development and operations at Wivenhoe Quarry.

Condition a Site Waste Management Plan.

8.9 Essex Police

Thank you for opportunity to comment on this application. Essex Police would like to see this applicant seek to achieve a Secured by Design award in respect of this development.

8.10 Highway Authority

From a highway and transportation perspective the impact of the proposal is acceptable to the Highway Authority subject to conditions.

8.11 LLFA (ECC SuDS)

Having reviewed the Flood Risk Assessment and the associated documents which accompanied the planning application, we do not object to the granting of planning permission, subject to conditions.

8.12 Landscape Advisor

In conclusion; there are no objections to this application on landscape grounds in principle, this however is provided the above recommendation of further boundary treatment planting gapping up is/are secured via a bespoke condition.

8.13 Natural England

Conduct an HRA/AA.

Officer response: This has been carried out.

8.14 NHS North Essex CCG

Please be aware that this planning application has been reviewed by the CCG and due to the only practice within 2km of the proposed development currently being under capacity, no further mitigation request will be made.

8.15 Places Services Ecology

No objection subject to securing: a) A proportionate financial contribution towards effective visitor management measures in line with Essex Coast RAMS; and b) Ecological mitigation and biodiversity enhancements.

8.16 Sport England

A detailed updated response received 26.05.2022. Sport England support the contribution towards the school pool but have an objection to the level of contribution towards the on site pitches. See relevant section of the report.

8.17 Urban Design

Full comments set out in design section below.

9.0 Parish Council Response

9.1 The Parish Council have stated that:

1) The proposed development contravenes the adopted WNP in that the area of development extends north of the settlement boundary as stipulated in the plan. The proposal includes development north of the pylons which is in contravention of the WNP.

2) The proposal includes the following allocation of housing types:

1 bed- 0

2 bed- 45

3 bed -50

4 or more bed- 25

WTC accept that whilst the numbers comply with the WNP (Policy WIV 29) the density of the development south of the pylons could be increased so that the development area does accord with the WNP.

Policy Wiv 29 also stipulates 'a minimum of 45 dwellings shall be provided with one or two bedrooms which should be designed as homes suitable for older people, single people, or for young couples. They could be bungalows, terraced properties or apartments;'. WTC request that the development includes a number of apartments, terraced properties, including one bedroomed properties. The housing needs of the residents of the town were taken into consideration in the WNP and have not changed. The town needs additional smaller properties for both young and elderly residents.

3) The ownership of the strip of land to the south of the proposed development is in contention but was included in the settlement area in the WNP. Whilst WTC accept that this is not part of the planning application, it should be noted that this

area would have provided sufficient land for 10 dwellings and yet TW are proposing to build 30 dwellings north of the pylons. The Inspector agreed to 120 dwellings in the settlement area. WTC maintain that TW are proposing to build 30 houses north of the pylons as the housing density is too low.

4) Experience has taught WTC that ownership and responsibility for maintenance of open spaces, cycle paths and pathways must be confirmed by the applicant at the time when planning permission is given.

In consultation with TW, WTC have been assured that the open spaces will be maintained by a management company with the costs covered by management fee from the residents, the cycle paths, pathways and lighting adopted by highways and the sports areas to either be managed by CBC or WTC.

WTC request confirmation of this agreement as in section 11 of the Design and Access Statement it states on open spaces that; It is expected that the main roads will be adopted by Essex County Council as part of the highway, whilst all areas of public open space will be adopted and managed by the town council (details to be agreed).

While later in the same section it states: It is envisaged that all public and communal landscape spaces will be maintained either through adoption by the local authority or placed under the control of an estate management company. A plan identifying the short- and long-term maintenance operations and management aspirations of these spaces is included as part of the soft landscape proposals

TW also confirmed verbally that the wildlife area, even though it does not form part of the application, will be maintained by the management company.

Further representations were then received from Wivenhoe Town Council following further consultations, these reaffirmed the objection above and noted how notwithstanding the amendments made, the scheme still fails to comply with the NP.

Officer response: Many of these issues are addressed in the main report but in short, the housing mix is held to be acceptable and is what the applicants would like to be assessed. The use of land north of the powerlines will be addressed in the main report. Officers do not agree that this scheme is too low in density, but consider it is to of an appropriate density compared to the character of the area immediately around it. The management of the POS and the other areas of the site will be agreed via the legal agreement, but it is correct to state that the applicants intend to use a management company to do this. A landscape management plan condition is proposed to ensure the non-privately owned areas are maintained.

10.0 Representations from Notified Parties

10.1 The application resulted in a number of notifications to interested third parties including neighbouring properties and the Wivenhoe Society. 31 representations raising objections have been received and 19 general observations were received.

10.2 The full text of all of the representations received is available to view on the Council's website. However, a summary of the material considerations is given below.

- This will ruin the area.
- The scheme is unacceptable in principle
- This scheme is harmful to highway safety.
- There will be traffic gridlock.
- There should be an access off of Elmstead Road and not Richard Ave.
- This is harm wildlife/ecology.
- More parking in the main estate will cause hazards.
- There needs to be a construction access on Elmstead Road.
- How can Elmstead Road be acceptable for HGV use?
- The scheme does not comply with the NP Policy.
- There should not be any dwelling north of the power lines.
- The cycle link does not go anywhere.
- The playground is needed on site.
- Wivenhoe does not have the infrastructure capacity to cope with this development. – eg Schools, Doctors, shops, chemists etc.
- This will harm air quality.
- This will swallow up the village.
- We will become part of Colchester.
- The traffic on Clingloe Hill is very bad.
- The drainage on site is poor, this will make it worse.
- The dwellings will overlook the neighbours.
- The proximity to Wivenhoe FC will result in terrible traffic jams.
- The scheme should be flipped so they face the Elmstead Road and then more space would be available for the housing.
- I do not object to new houses being built.
- TW should contribute to the community.
- The cycle route is near existing dwellings and will cause disturbance.
- Who will deal with the lighting on site – other developments have suffered from a lack of responsibility being taken.
- An HRA should be carried out.
- Elmstead Road should have footways and speed bumps installed.
- There should be 30% affordable homes.
- The open space/sports pitch should be passed to the Wivenhoe & District Sporting Facilities Trust.
- There should be a fence to contain the dogs.
- No commitment to zero carbon homes.
- The amended scheme have not addressed our concerns.
- Why do we need new football pitches – we need multi use.

- Where is the parking for the new football pitches?
- Will the pitches need lighting?
- EV charging?
- The developers have not dealt with the fact they do not own the area of land to the south that is needed for compliance with the plan.

Officer response: Many of these matters are dealt with in the report below. The site is allocated in the WNP so it is considered that the principle is acceptable. It is not considered that this scheme will create materially harmful coalescence with Colchester. The matter of the land to the north of the pylons is considered in the report below. The suggestion that the access point should be on Elmstead Road would result in a scheme that further deviates from the NP which the applicants want to avoid. Highway safety, parking, ecology, drainage and impact on amenity is deal with below. The detail of the football pitches will be set out in the legal agreement and they will be passed to CBC. The dog walking area could be fenced – that would be dealt with via the landscaping condition. EV charging will be provided and the scheme will meet the new uplifted Building Regs. An HRA has been carried out. The policy requires 20% affordable homes. The allocation of the affordable units will be via the usual mechanisms. It is not considered than the new cycle/footway will case material harm to existing neighbours. Community contributions to mitigate the development have been agreed.

11.0 Parking Provision

11.1 The scheme meets the adopted standards in terms of on-plot and visitor parking.

12.0 Accessibility

12.1 The applicants state that the preparation of the scheme has been undertaken in line with current best practice contained in BS8300:2018 (Design of an accessible and inclusive built environment) and Building Regulations Approved Document M (2016 edition). It is the intention of the applicant that everyone can enjoy the new homes with no discrimination and no barriers.

12.2 The site is already broadly flat, therefore all routes throughout the sites and all approaches to the buildings can be designed to be step-free and to minimise gradients. Careful design of roads and paths will also ensure that level access can be achieved to every house. Car parking is conveniently located in relation to the home it serves, connected by step-free and well-lit routes.

12.3 All of the proposed affordable housing will meet Part M4 (2) Building Regulations and 39 of the market housing will too. 1 affordable unit will also meet Part M4 (3) Building Regulations and will be a fully wheelchair accessible home.

13.0 Open Space Provisions

- 13.1 5.81 ha of open space will be provided on site far in excess of the minimum 10% needed. The land for two football pitches are provided within the site, located close (ie next to) the football club to the east. These will be taken on by CBC – more detail in relevant section below.

14.0 Air Quality

- 14.1 The site is outside of any Air Quality Management Area and will not generate significant impacts upon the zones. The scheme has been accompanied by an Air Quality assessment and that considered the potential air quality impacts associated with the proposed residential development.
- 14.2 It was noted that there is the potential for dust and PM10 impacts during the construction phase, however, with the proposed mitigation measures in place secured via a construction management plan condition, these impacts will be not significant.
- 14.3 The impact of additional emissions associated with the development on local air quality was assessed and is considered not significant. This is based on the fact that concentrations will be well below the relevant objectives and impacts at each receptor modelled will be negligible.
- 14.4 The impact of local air quality on future residents of the development was also considered. It is considered that air quality for future residents will be good and no mitigation is required. Overall the AQA concluded that there are no air quality constraints to the proposed development which is in accordance with local and national policy and guidance.

15.0 Planning Obligations

- 15.1 As a “Major” application, there was a requirement for this proposal to be considered by the Development Team. It was considered that Planning Obligations should be sought. The Obligations that would be agreed as part of any planning permission would be:

Community - £320,040.65

Project - Broomgrove School Community Swimming Pool upgrade 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.

Parks & Recreation – £529,609.75

Project – Football Pitches Land is being transferred to Council for Football Pitches

£390,109.77 – for delivery of Football Pitches
£139,500 – Maintenance of Football Pitches

The applicants have noted that they do not wish the rest of the site to be adopted by CBC and will manage it themselves via a management company, however if CBC were to take it on that would require a contribution of circa £850,000 for the ongoing upkeep.

Education –

Secondary travel for Education - £119,472.00
Primary School Travel contribution: £796,244.40,
Early Years and Childcare contribution (10.80 places) at £17,268.00 per-place, PUBSEC index-linked from January 2020;

It is noted that the need for the travel contribution has been queried with ECC Education and may fall away.

Affordable Housing –

Planning Officer to confirm with applicant that the applicants have discussed with a Housing Association they're happy to take 4x4 Beds as AR due to current affordability issues.

Officer response – this has been confirmed and the provision of four bedroomed affordable dwellings was actually increased at the requests of the Housing Officer in order to make the on site provision proportionate.

Affordable housing should meet the enhanced accessibility standard of Part M4 cat 2 (Building Regulations 2015) in lieu of lifetime homes, in accordance with the requirements in DP12 (Development Policies 2014). Council would request 5%(1) of affordable homes is designed to meet Part M4 Cat (3) (2) (a) or Part M4 Cat 3 (2) (b).

Archaeology - £15,153

£14,400 for museum display case, design and display material

£753 for enhancement of the Colchester HER

£348 will be required if no archaeological remains are affected by the development, to integrate the information from the archaeological investigations.

16.0 Report

Principle

- 16.1 Neighbourhood Plan Policy WIV 23: Additional dwellings in the Wivenhoe Parish, states that new residential development will be supported on the four sites allocated for development in Policies WIV28-31 with a cumulative capacity of around 250 dwellings and additionally on windfall sites within the settlement boundary.

- 16.2 The site is allocated under Policy WIV29 of the Neighbourhood Plan. The site allocation total area comprises a 11.58 hectares and is allocated for a **minimum of 120 dwellings** subject to a number of conditions as follows:
- i. Minimum of 45 dwellings with one or two bedrooms;
 - ii. No more than 25 dwellings shall have four bedrooms or more;
 - iii. Dwellings should be designed for older residents or active retirees should preferably be built to the Lifetime Homes standard;
 - iv. 20% of all properties to be affordable housing;
 - v. it can be demonstrated that the development will not have a detrimental impact on wildlife, as evidenced through an appropriate wildlife survey;
 - vi. vehicle access into the residential part of the site shall be provided from Richard Avenue;
 - vii. 2 hectares of land to the northern part of the site adjacent to Broad Lane Sports Ground as indicated on Figure 35 shall be provided for additional sports pitches;
 - viii. a dedicated footpath / cycleway along Elmstead Road to link up Broad Lane Sports Ground with the built-up part of Wivenhoe shall be provided;
 - ix. a shared-use footpath and cycle track provided directly linking the development to the facilities at Broad Lane Sports Ground and linking with the public footpath to the south of the site;
 - x. a contribution shall be paid towards the creation of a combined footpath/cycle track linking the new development to the public footpath (FP No. 14) from The Cross;
 - xi. contributions towards open spaces, sports, recreational facilities and community facilities shall be required in line with Borough Policies current at the time any application for planning permission is made
- 16.3 The layout for the proposed scheme is based on the Neighbourhood Plan which allocates the land for residential development, open space and sports pitches and play areas to the south. However, the applicants note that what they refer to as '*necessary deviations*' are made as a result of technical constraints necessitating some residential development to the north of the electricity pylons.
- 16.4 The residential area extends to approximately 3.51 ha, of which 0.7ha sits to the north of the pylons and 2.81ha located to the south of the pylons. The residential area is off set from the site boundaries in response to the site's numerous constraints and to provide adequate separation with the neighbouring houses to the west.
- 16.5 A surface water attenuation basin has been positioned at the lowest point of the site in the southeastern corner and has been integrated into the landscaping scheme. The Local Wildlife Site to the east is not being developed as part of proposal.
- 16.6 2 ha of land for sports pitches are proposed at the northern end of the site adjacent to existing facility at the Broad Lane Sports Ground.

Housing Mix

- 16.7 The 120 dwellings will comprise of 2, 3 and 4-bedroom houses, responding to the Neighbourhood Plan, as follows:
- 2 Bed 45 (37.5%)
 - 3 Bed 50 (41.7%)
 - 4 Bed 25 (20.8%)
 - Total 120 (100%)
- 16.8 Both private and affordable dwellings include the provision of family-sized units (3 bed or larger units) including three-bedroom units.
- 16.9 The NPPF does not set any specific policy requirements in relation to affordable housing but requires local planning authorities to ensure that their policies meet the full, objectively assessed needs for market and affordable housing. The unmet need is significant and affordable housing represents an important public benefit.
- 16.10 Adopted Core Strategy Policy H3 which seeks to secure a mix of housing types and tenures and Policy H4 requires the provision of 20% affordable housing in new housing schemes.
- 16.11 Part iv of Neighbourhood Plan Policy WIV29 requires 20% of all properties to be affordable or that percentage relevant in policy at the time of the application being submitted.
- 16.12 In terms of affordable units, the proposed housing mix comprises of 96 private sale units and 24 affordable units, which equates to 20% on-site affordable housing provision. The affordable housing to be provided as shared ownership, and affordable rent. The proposal delivers a tenure split of 79:21 in favour of Affordable Rent. This is policy compliant.
- 16.13 The WTC comments looking for more smaller properties including 1-bedroom properties is noted however the applicants consider their mix to be appropriate. It does meet the requirements of the NP and is therefore held to be acceptable.

Density

- 16.14 Although density is not specified within Policy WIV 29, it states that 4.06 hectares of the land is suitable for the erection of a minimum of 120 dwellings of mixed typologies. This equates to a minimum density of 30 dwellings per hectare for the residential land allocated on the site.
- 16.15 The proposed development will have a residential density of 34 dwellings per hectare (dph) with 120 dwellings on only 3.5 hectares of land. The scheme has a slight increase in density against the baseline set by the Neighbourhood Plan. This minor departure is nominal as the

proposal is to be provided on a smaller area of land than the neighbourhood plan allows for.

WIV 29 departures

- 16.16 Figure 35 of WIV 29 is supported by a map which sets out where residential, open space, sports fields, new sports fields and play areas should be provided.
- 16.17 The proposal broadly aligns with these locations but does not comply completely.
- 16.18 Paragraph 12 of the NPPF sets out 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. 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.”
- 16.19 In this case the development plan is considered to be up to date; therefore, the LPA needs to consider whether the material considerations which we set out below indicate that the plan should not be followed.
- 16.20 The applicant is of a clear view that material considerations do exist and have made the following justifications:
- 16.21 Post submission discussions have centred around the positioning of the residential area proposed against that identified within Figure 35 of the Neighbourhood Plan. In particular the provision of residential to the north of the east – west pylons.
- 16.22 In addition the re-positioning of the land for sports pitches to the north of the wider site, adjacent to the existing sports pitches was discussed. However, this is considered to be acceptable, due to the better synergy that this land would have with existing sporting facilities between Elmstead Road and Brightlingsea Road.
- 16.23 The residential area identified in red on Figure 35 of the WIV 29 Allocation extends to 4.06ha for a minimum of 120 dwellings. However, the primary material consideration is that the residential area allocated is constrained and in the applicant’s opinion, only 2.81ha is in fact developable. This is a significant material consideration when assessing the proposal.

16.24 The applicants cite the following limitations:

- Along the northern boundary is it not possible to build up to the pylons due to their being a no build zone of either side.
- The eastern boundary is characterised by trees and the root protection zones extend into the residential area.
- A large proportion of the southern part of the site is dedicated to the national playing fields association (Fields in Trust), and therefore cannot be developed.
- Along the western boundary, the developable area is reduced further by no build zones along the existing water easements
- In addition, the engineers have advised that an attenuation basin should be provided in the south eastern corner to address the technical drainage and flood requirements which arise with residential use.

16.25 The applicants argue that this in turn renders the residential requirements of the Neighbourhood Plan unfeasible within the developable area (2.81 hectares) within the residential allocation that remains. If a minimum of 120 units were considered on a smaller parcel, this would result in a minimum density of 42.7 dwellings per hectare. This would appear completely at odds with the surrounding contextual residential character. This would be even more unfeasible if the necessary design requirements for residential use and the local and regional level were taken into account. In short, the design (detailed later) would be more cramped and far less landscape led than the current proposal.

16.26 Officers consider that the proposed density is acceptable as more land is given over to public open space, which is a benefit to the scheme and the wider area. Whilst some representations have noted they would prefer a higher density scheme, so that the land to the north of the power lines would not be utilised, it is considered that this is not likely to result in a design appropriate to the area. It would result in a cramped form of development wholly out of keeping with the rural feel of this edge of settlement location. It would not leave sufficient space for the planting and open space within the development that the application before members enjoys. This would significantly diminish the sense of place that could be created.

16.27 It is also noted that a number of the representation were seeking an alternative approach, that being a single access off of Elmstead Road instead of Richard Avenue, and potentially the built form being brought north to sit along the Elmstead Road frontage. Regardless of the merits of this approach, it is not an approach that has been taken by the applicants as it is a far greater deviation from the neighbourhood plan than the application before Members now.

- 16.28 It is important to note that the applicants state that they have reviewed the evidence base to the Wivenhoe Neighbourhood Plan and consider that there is a notable absence of any evidence which explains why the residential area as shown in Figure 35 was selected to only be to the south of the pylons. They consider this to be an arbitrary line and state that it doesn't represent a physical boundary line. Furthermore, they note and extensive existing built area to the west which extends north of the pylons. This too is a very important material consideration.
- 16.29 Officer consider that moving development north, outside of the defined settlement limit as show in the NP must be assessed not only on the wording of the policy but as a matter of planning judgement. This judgment comes down to a matter of demonstrable harm. Development north of the power lines must be assessed in landscape terms. That matter is dealt with in the relevant section below.

Sports Pitches

- 16.30 WIV 28 requires at *vii. 2 hectares of land to the northern part of the site adjacent to Broad Lane Sports Ground as indicated on Figure 35 shall be provided for additional sports pitches.*
- 16.31 This scheme does deliver the requirements of the NP. It does provide the land which will be passed to CBC. The land could then be passed to another party. The applicants are also providing a contribution for the laying out of the pitches and the future maintenance of them as set out in the relevant section above.
- 16.32 Sport England have stated that the site should provide formal space to play sports on which it could do. Formal pitches need to be perfectly flat, have their own drainage system and have demands for other items such as fencing, changing rooms, and some have lighting etc. They would not be open to the public for recreational use as they are maintained to be used for club use only. Sport England are concerned and have a (non-statutory) objection as at this stage the precise cost of the pitches is not known and are worried that the financial contribution may not be enough to fully deliver the pitches leaving CBC with a shortfall.
- 16.33 Sport England are also concerned that if the space is to be used formally, it will generate a number of associated impacts on the football club next door in terms of need for changing facilities and parking etc. They are also concerned that the contribution proposed has been derived from the SPD but not a formal appraisal of the site by a pitch specialist and therefore it is unclear as to what the full cost would be. This means further money may be needed to complete the work.
- 16.34 This is not held to be a reason for refusal of planning permission. The NP's requirements are met (save for the position of the pitches being different which is held to be a benefit). The contribution as set out in the section above is what the Parks and Recreation Team have requested to deliver the pitches and then maintain them. It would not be reasonable to

expect 120 dwellings to deliver a contribution above what is expected via the SPD, particularly when the land is being passed to the Council for free.

- 16.35 Through the landscaping condition and legal agreement it will be possible to ensure the land for the sports pitches will be passed to the Council in a reasonable state, ready for the delivery of the pitches. Once the land has been passed to the Council it will be up to the Parks and Recs Team to deliver the pitches. It is noted that in the event that it transpires more money is needed to do this that this scheme secures, the P&R team could use this as a spend purpose for other applications the area. The same is true for the potential improvements to the Football Club next door. Other applications may be able to contribute toward improvements there, but it is not reasonable to expect this scheme to contribute more than the SPD sets out.

Highway Implications

- 16.36 Core Strategy policy TA4 seeks to make the best use of the existing highway network and manage demand for road traffic. The policy makes it clear that new development will need to contribute towards transport infrastructure improvements to support the development itself and to enhance the broader network to mitigate impacts on existing communities. Development Plan policy DP17 requires all development to maintain the right and safe passage of all highways users. Development Plan policy DP19 relates to parking standards in association with the Vehicle Parking Standards SPD. Recently adopted Section 1 Policy SG1 states that development that reduces the need to travel will be encouraged. Emerging Plan Policies DM15, DM20, DM21, and DM22 have similar requirements to adopted policy, with particular emphasis on enhancing accessibility for sustainable modes of transport. NP policy WIV 17 echo these sentiments. WIV 18 requires cycle and pedestrian connectivity improvements.

- 16.37 In accordance with the requirements of WIV the scheme has an access from Richard Avenue. An access on Elmstead Road has not been suggested as the NP requires the access to be taken from Richard Avenue.

- 16.38 In addition, the NP has a number of highway criteria:

viii. a dedicated footpath / cycleway along Elmstead Road to link up Broad Lane Sports Ground with the built-up part of Wivenhoe shall be provided;

This has been requested as a condition by the Highway Authority.

ix. a shared-use footpath and cycle track provided directly linking the development to the facilities at Broad Lane Sports Ground and linking with the public footpath to the south of the site;

This is shown on the landscape drawing and will be secured via the landscaping condition, but due to land ownership issues it does not reach as far as the PRow to the south.

x. a contribution shall be paid towards the creation of a combined footpath/cycle track linking the new development to the public footpath (FP No. 14) from The Cross;

This has not been secured as the link to FP14 cannot yet be made due to a piece of intervening land that is not in the applicant's ownership. It is not therefore likely to be delivered.

16.39 The scheme and the accompanying Transport Statement have been assessed by the Highway Authority and they have no objection to the scheme subject to conditions.

16.40 Whilst the representation noting the highway implications of this scheme have been carefully considered, in terms of traffic impact, paragraph 111 of the NPPF states that 'development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe'. Given that the Highway Authority have no objections to the proposed development in terms of transport and highway impact, and that a range of mitigatory measures can be secured, it is concluded that it cannot be demonstrated that the proposed development would have an unacceptable or severe impact on the road network. A refusal on these grounds is not considered to be justified or sustainable at appeal.

Proposed Design/Layout

16.41 The Government guidance on design is provided by the National Design Guide and National Model Design Code, both of which form part of the governments Planning Practice Guidance. The National Design Guide seeks to deliver places that are beautiful, enduring and successful by setting out the characteristics of well-designed places and outlining what good design means in practice. Whilst the National Model Design Code sets out clear design parameters to help establish what good quality design looks like and provides a common overarching framework for design. These documents are intended to help create beautiful and distinctive places, with a consistent and high quality standard of design.

16.42 At a local level these policies are carried through and adopted as part of the Colchester Borough Council Local Plan 2001-2021. Relevant policies include Core Strategy Policy UR2 and Development Policy DP1, which seek to secure high quality and inclusive design in all developments and avoid unacceptable impacts on amenity. These policies are supported by more detailed guidance provided supplementary planning documents such as the Essex Design Guide.

16.43 In terms of housing density and diversity, Core Strategy policies H2 and H3 require developments to make efficient use of land and relate to their context. A range of housing types and tenures across the Borough is sought in order to create inclusive and sustainable communities. The Section 2 Local Plan can now be given very considerable weight. Section 2 Local Plan Policy DM10, also requires a range of housing types and tenures for the same reason. Section 2 Local Plan Policy DM9 makes specific reference to the setting of important heritage assets; access and local road network; scope to enhance walking and cycling access to local amenities and public transport; and existing landscaping, trees, and hedgerows; matters that have been considered above. Section 2 Local Plan Policy DM15 sets out the criteria for a well-designed development. It is of particular relevance with regard to setting design standards and amongst other requirements seeks to ensure proposed developments respect and enhance the character of the site, its context and surroundings in terms of its layout, architectural approach, height, scale, form, massing, density, proportions, materials, townscape and/or landscape qualities, and detailed design features.

16.44 The NP Policy WIV 27 'Design and Access' sets out the criteria for developments that requires a Design and Access Statement such as this one.

The in house Urban Designer has provided the following comments:

16.45 "The proposed spatial strategy has its misgivings, namely its insular nature, fragmented appearance and the peripheral positioning of the POS. All of which are less than desirable in design terms, however they are somewhat dictated by the sites physical and policy constraints. A lack of green/blue infrastructure and incidental/informal spaces within the residential parcels remains. As a result, the proposal retains a relatively formal and engineered character, giving prominence to vehicular movements. That said, in response to the sites context, the spatial approach adopted appears relatively logical in terms of the areas suitable for residential development and the location of strategic open space, SUDs and primary estate roads. The layout also deals with sensitive edges appropriately and achieves adequate pedestrian permeability and connectivity. On this basis the spatial strategy adopted is considered broadly acceptable in terms of achieving the quantum of development proposed in an appropriate manner."

16.46 "Parking courts are utilised in places and facilitate the use of terracing with pedestrian frontage adjacent to some areas of POS. This reduces vehicular prominence adjacent to some areas of POS and provides the most discernible variance in the character of the built environment across the site. It is noted that car ports have been added to parking courts and between a number of units and this has provided a modest level of enhancement. However, the homogeneity in the positioning of the proposed built form and the low ratio of built frontage to parking remain a predominant feature. As such, the failure of the majority of the proposed built form to create any genuine sense of enclosure remains."

16.47 “The previous revisions to the scheme established a site wide identity, through the consistent application of form, detailing, materiality and proportions of the built environment. The form and materials are relatively consistent with the sites surrounding context, whilst the application of detailing and materials seek to establish a more unique design aesthetic. This approach and the ‘stand-alone’ identity established, are considered acceptable given the sites relatively self contained nature. More recent amendments to the scheme have sought to enhance the prescribed character areas, however their subtlety inhibits their impact and the road hierarchy continues to lack definition. A number of elevational treatments have also been subject to subtle amendments in order to enhance the contribution the built environment makes to the quality of the public realm.”

Design Policy Compliance

16.48 “The proposal provides a substantial area of public open space and facilitates key pedestrian and cycle links within the wider area. The spatial strategy adopted achieves good levels of; pedestrian permeability, access to open space and connectivity to surrounding land uses. That said, the layout retains a somewhat formal/engineered character. The proposed built environment does fail to adequately enclose space in places, or provide incidental areas of POS, however it does achieve a relatively strong identity. Additionally, though the prescribed character areas are lacking, there is some diversity in the areas in public realm across the site. Combined, it is considered these neutral/positive features of the proposal could establish a sense of place within the proposal.”

16.49 “As highlighted above, elements of the design of the proposed development have been improved, whilst others remain substandard in design terms. A number of the negative elements of the design are dictated by existing site constraints and the quantum of development proposed. It is considered that the proposed spatial layout makes relatively effective use of the land and provides wider public benefits. Though the standard of place making may not be optimal, a distinct site identity is established, and diverse areas of public realm are achieved. As such a balanced judgement is required as to whether the negative elements of the proposed design are considered acceptable in the context of the wider material planning considerations relevant to this application.”

16.50 Therefore it is clear that the quality of the design is a matter of planning judgement. This has been carefully considered by officers and the scheme as amended, on balance, is held that the scheme is acceptable in design terms.

Impact on Surrounding Area

- 16.51 Core Strategy Policy ENV1 seeks to conserve and enhance Colchester's natural and historic environment, countryside and coastline, with Core Strategy policy UR2 and Development Plan policy DP1 seeking to secure high quality and inclusive design in all developments, respecting and enhancing the characteristics of the site, its context and surroundings. These principles are also reflected in adopted Local Plan Section 1 Policy SP7 which can be given full weight and Section 2 Plan Policy DM15 which can be given very considerable weight. In addition, Section 2 Plan Policy PP1 requires suitable design and screening/landscaping to minimise any negative impacts on surrounding landscape.
- 16.52 Paragraph 20 of the NPPF stipulates that policies should set out an overall strategy for the design of quality places and make sufficient provision for the conservation and enhancement of the natural, built and historic environment including landscapes and green infrastructure.
- 16.53 The scheme has been accompanied by a Landscape Appraisal and in turn this has been assessed by the Council's in-house Landscape Advisor. This is a key issue as the fundamental difference between this scheme and the requirements of WIV are the dwellings that sit north of the high voltage power lines.
- 16.54 An addendum to the originally submitted Landscape and Visual Impact Assessment (LVIA) has been prepared by Arc and has been submitted in support of this application. Following comments received following the submission, an amendment was made to the scheme proposals and the LVIA update accordingly which referenced the scheme changes and the updates to the National Planning Policy Framework (NPPF).
- 16.55 The Arc addendum has been prepared to further consider the particular effects of the submitted scheme proposals on land to the north of the power lines and which falls outside the area previously assessed by the original LVIA. To assist in considering the visual effects of development to the north of the power line, a series of verified views have been prepared which illustrate the visibility of the proposed development from 6 locations.
- 16.56 The objections to this from many parties are noted, but the question that must be asked is 'does proposed the layout cause materially harmful impact on landscape interests compared to a policy complaint scheme'?
- 16.57 As set out by the LVIA, the answer is 'no'.
- 16.58 In summary, the proposed development will only be visible from locations within close proximity to it. There is some visibility from public rights of way and public open spaces, however these are not located in designated landscapes or in locations identified as being sensitive. The new houses will be of a similar scale and form to those within the adjacent Broadfields housing estate and buildings have been designed to reflect the

architectural styles and materials traditionally found in this part of Essex albeit a contemporary interpretation of it. Whilst the new housing will appear into parts of the view where currently there is no built form, once planting has been established, which will assist in assimilating buildings into the view, the LVIA considered that there will be no adverse effects on visual amenity.

- 16.59 In addressing the effects of the proposed layout which extends beyond the land allocated within the Neighbourhood Plan, the introduction of houses to the north of the power line will inevitably change the extent of houses visible, however again this will only be a change experienced from very limited locations. The view from the path along Elmstead Road will see the housing extend further east however this will be a limited and localised change for a short stretch of path. It is not considered that the additional houses will result in any harm to the visual amenity and from that location. Similarly, whilst from some locations housing to the north of the pylons will be visible from within the Crosspit Local Nature Site, the nature of the change will be very limited and will not notably change the experience of walking through the area compared with a development that only extended to the south of the pylons.
- 16.60 To summarise, it is very clear that the scheme as proposed will bring dwellings closer Elmstead Road than the high voltage power lines but they are still set a significant distance back from the road. There is still space for the proposed football pitches between the dwellings and the Elmstead Road junction. It will not, therefore, create a hard urban edge on the approach to Wivenhoe from this direction.

Landscaping

- 16.61 In terms of landscaping, the detail planting proposals within the residential sections of the site have been developed to reinforce the street scene as well as to create individual identity within different areas of the scheme. In this respect, the street tree planting and frontage hedgerows provide the landscape framework along the primary and secondary routes and spaces. Different streets will be assigned different tree species as well as single species hedges. This allows identifiable changes in the street scene and a sense of place to be identified. Along the tertiary routes, as well as within the smaller housing cells, peripheral areas of the scheme and where built form abuts open space, a pallet of shrubs, ornamental grasses and herbaceous planting will be selected to create the individuality and variation in texture, colour and form. This also reflects a change to either smaller scale or a softer character of development type.
- 16.62 The precise detail of the landscaping will be dealt with via condition.

Impact on Neighbouring Amenity

- 16.63 Development Plan policy DP1 and Emerging Plan Policy DM15 require all development to be designed to a high standard that protects existing public and residential amenity, particularly with regard to privacy, overlooking, security, noise and disturbance, and daylight and sunlight.
- 16.64 This scheme has been designed to be compliant with the Essex Design Guide in terms of overlooking and back-to-back distances. Whilst the dwellings nearest to the existing residential dwellings face on to the western boundary they will have upper floor windows so the guidance for back-to-back distances has been followed, that being 25m back to back where the angle is less than 30 degrees and 15m where it is more than 30 degrees.
- 16.65 Due to the degree of separation between the proposed dwellings and the existing, there are no concerns with regards to oppressiveness or loss of light to the existing neighbours.
- 16.66 It is also noted that the western boundary has a good level of existing screen planting already, much of which is covered by a TPO, however this is gappy in places, in particular further south. This boundary planting can be significantly bolstered with landscaping that will be secured via the landscaping condition. The addition of planting will help further filter any views from the new dwellings.
- 16.67 It is accepted that the scheme will intensify the use of the access point and in turn that will cause an increase in noise and disturbance to existing dwellings. This is an inevitable consequence for development of this type. The NP is clear that the site should be served via the access point that is proposed and therefore in this instance the increase in noise and disturbance is held to be acceptable.
- 16.68 The impact this scheme has on neighbouring residents has been carefully considered. New development such as this will have an impact on the neighbours who have been used to living next to an undeveloped site. There will be some overlooking that they did not previously experience but this is held to be within tolerable levels. Neighbours will also notice the change in terms of vehicle movements also but it is not held to be a matter that warrants refusal of a scheme of this scale.

Amenity Space Provision

- 16.69 It is clear from the layout that all dwellings can be provided with gardens in excess of the minimum standards as set out in the Local Plan Policy DP16. This is held to be acceptable.

Ecology

- 16.70 Section 40 of the Natural Environment and rural Communities Act 2006 places a duty on all public authorities in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity and a core principle of the NPPF is that planning should contribute to conserving and enhancing the natural environment. Development Plan policy DP21 seeks to conserve or enhance biodiversity and geodiversity in the Borough. New developments are required to be supported by ecological surveys where appropriate, minimise the fragmentation of habitats, and maximise opportunities for the restoration, enhancement and connection of natural habitats.
- 16.71 A Preliminary Ecological Appraisal was carried out also with a wintering Bird Survey. These surveys have demonstrated that the site supports a foraging/commuting bat assemblage of local to district value, a breeding and wintering bird assemblage of local value, and a low population of grass snake of site value. Hedgehog are also known to be present on site. Mitigation and enhancement measures are proposed for these species, including precautionary working methods, retention and protection of existing habitats and new habitat creation. This will be secured via condition.
- 16.72 As Wivenhoe Cross Pit LoWS lies partially within the site and is directly adjacent to the proposed development area, direct impacts on this site such as pollution events, noise and lighting disturbance during construction are possible. This will require mitigation guided by the production of a Construction Ecology Management Plan (CEMP: Biodiversity), recommended to be secured by planning condition. Due to the ecological sensitivity of this part of the site, the existing treeline boundary feature between the arable field and LoWS will be retained and the layout design includes a minimum 10m buffer between the treeline and the edge of the built development. The ecology report further recommended that a Biodiversity Mitigation & Enhancement Strategy (BMES) is secured via planning condition and prepared prior to occupation; the BMES should include provisions for the LoWS area, detailing measures to minimise disturbance to sensitive features and enhance the site for wildlife long term.
- 16.73 The scheme, and the wintering bird survey has been independently assessed by Place Services ecologists. They are now satisfied with the scheme subject to the conditions noted at the end of the report.
- 16.74 Through implementing the recommended mitigation and enhancements, it is considered that all significant negative impacts from the proposed development upon protected and notable habitats and species will be fully be mitigated in line with relevant wildlife legislation and national and local planning policy related to biodiversity.

Biodiversity Net Gain, Canopy Cover and Trees

- 16.75 In terms of Biodiversity Net Gain (BNG) Other proposed features comprise public open space and attenuation basins, and it is anticipated that the appropriate management of these features for biodiversity could achieve a measurable Net Gain in terms of area habitats.
- 16.76 Biodiversity net gain calculations have been provided. The net gain assessment evidences a prospective future biodiversity net gain of 2.66 habitat units across the wider site, a net positive change of 35.88%. This is in excess of the 10% future mandatory requirement set to be brought into legislation under the forthcoming Environment Bill, evidencing the high biodiversity value offered by the proposed development scheme as a whole.
- 16.77 In terms of tree matters and Canopy Cover (CC), a Tree Survey/AIA has been provided. The existing trees on site will be retained and protected (save for some loss at the proposed access point) so the canopy cover from these trees will not change significantly, instead new planting will increase existing canopy cover.
- 16.78 The internal area of the site is currently vacant with no tree cover for the most part, only those trees around the edges. It is therefore held that a 10% canopy increase can easily be achieved with new tree planting incorporated in a soft landscape design, that can be conditioned as part of a planning consent with the scheme.

Public Rights of Way

- 16.79 This scheme does not impact upon existing public rights of way. It will prove a new link through the site to one of the cul-de-sac's on Alexandra Drive and to Elmstead Road which is beneficial. It will also provide a link towards Henrietta Close, however as the applicants do not own the land to the south, the footpath will stop at the boundary. This is clearly not ideal, but it is sensible for it to be provide to allow a future link which may potentially be possible at a later date.
- 16.80 Representations have noted this lack of full link and state that the failure provide it means the scheme is unacceptable. Whilst it is unfortunate it is a matter of land ownership and officers do not consider that the lack of the full link warrants a refusal of a scheme with the other planning benefits that are demonstrated.

Flood Risk

- 16.81 Core Strategy Policy SD1 and Development Plan Policy DP20 require proposals to promote sustainability by minimising and/or mitigating pressure on (inter alia) areas at risk of flooding. Policy DP20 also requires all development proposals to incorporate measures for the conservation and sustainable use of water, including the appropriate use of SUDs for managing surface water runoff. Emerging Plan Policies CC1 and DM23 state that development will be directed to locations with the least impact on

flooding or water resources. Major development proposals required to reduce post development runoff rate back to the greenfield 1 in 1 year rate, with an allowance for climate change. On brownfield sites where this is not achievable, then a minimum betterment of 50% should be demonstrated for all flood events. In addition, emerging plan policy DM24 requires all new residential development to incorporate Sustainable Drainage Systems (SuDS) appropriate to the nature of the site.

- 16.82 NP Policy WIV 24 requires development to provide evidence that local infrastructure will be provided and/or improved relative to the size and scale of the development proposed. This requirement will apply to all infrastructure, including education provision and flood prevention (fluvial, sea and surface water).
- 16.83 NP Policy 26 requires development to be located to minimise the risk of fluvial and surface water flooding; and (ii) provide, wherever possible and appropriate to do so, sustainable drainage, as outlined in the Essex County Council SuDs Guide (or any successor document). It states that wherever possible this should be designed using above ground drainage features to help ensure robust treatment to improve the quality of water entering into local water bodies. The system should also promote wildlife habitats as well as green and blue corridors; and (iii) maximise the use of permeable surfaces wherever possible.
- 16.84 The NPPF also establishes policy relating to flood risk management. The main focus of the policy is to direct development towards area of the lowest possible flood risk without increasing the risk elsewhere. The NPPF advises that the sequential test should be used to steer new development to areas with the lowest risk of flooding. This a requirement for developments located in either Flood Zone 2 or 3.
- 16.85 The site is located in Flood Zone 1, at low risk from flooding. The principle of residential and other development on the site is considered acceptable through the allocation of the site in the Neighbourhood Plan.
- 16.86 A Flood Risk Assessment has been prepared by Stormor and submitted with this application. The assessment considered that the site would not be at risk of flooding from fluvial sources, sewers, groundwater, or artificial sources. It also outlines the principles of a drainage strategy which includes an attenuation basin in the south east corner of the residential area.
- 16.87 There is a public surface water sewer running adjacent to the eastern site boundary which connects to a 610mm diameter public surface water sewer to the south east of the site. There are public foul water sewers within Henrietta Close and Richards Avenue, to the west of the site. These sewers connect to the pumping station at the southern end of Henrietta Close The proposed surface water drainage strategy for the site demonstrates a system of SuDS and attenuation features to provide

sufficient storage to avoid flooding within the site during the 1 in 100 year storm event + 40% allowance for climate change.

- 16.88 After a number of amendments, the LLFA (ECC SuDS team) are happy with the scheme subject to conditions. On that basis, the site will therefore not be at risk of flooding or increase the flood risk to others as a result of the proposed development.
- 16.89 Anglian Water commented on an earlier iteration of the drainage strategy and were satisfied with the foul water but not the surface water approach. The strategy was amended to attempt to overcome their objection and they required clarification that the LLFA were satisfied with the applicants approach. The LLPA is satisfied and the response from the LLFA has been sent to Anglian Water. On the basis that the full details will be conditioned at the LLFA's request as can be seen at the end of this report, this is not held to be a matter that warrant a refusal of this scheme.

Land Contamination

- 16.90 Development Plan policy DP1 requires new development to undertake appropriate remediation of contaminated land. Emerging Plan Policy ENV5 supports proposals that will not result in an unacceptable risk to public health or safety, the environment, general amenity or existing uses due to land pollution.
- 16.91 Policy DP1 – Design and Amenity confirms that development will need to undertake appropriate remediation of contaminated land. Paragraph 178 of the NPPF, also states that a site should ensure it is suitable for its proposed use taking account of ground conditions and any risks arising from land contamination.
- 16.92 A contaminated land assessment and Ensafe letter with additional gas testing supporting evidence has been proved to support this application carried out by by Dr Melissa Morales.
- 16.93 The report concludes that no potential sources of contamination were identified at the application site, and as such no further recommendations were given or works necessary. The inhouse Contaminated Land officer agrees with these findings and subject to an unexpected contamination condition is satisfied with the scheme.

Agricultural Land Classification

- 16.94 No assessment of agricultural land value was submitted with this application as the applicants argue that the land is allocated in the WNP and therefore it is not necessary to provide one.
- 16.95 Whilst this scheme will therefore result in the loss of agricultural land, although it is not in food production currently, this is convincingly

outweighed by the public benefits of the scheme, namely the provision of housing and affordable housing in particular. The agricultural land in the Borough generally falls within these categories and this constraint is not unique to this site.

Health Implications

- 16.96 Policy DP2 of the adopted Local Plan requires all developments in excess of 50 units to be accompanied by a Health Impact Assessment to identify the potential health consequences on a given population and maximise the health benefits and minimise potential adverse effects.
- 16.97 In accordance with Policy DP2 an HIA has been prepared by Hodkinsons and is submitted in support of the application at the site. This concludes that the proposed development will benefit from features in its design, and its location, that will positively influence the health of the occupants as well as to local residents. It is also not considered to have any significant adverse impact on the provision of healthcare or educational facilities within the local or wider area.
- 16.98 The NHS has commented on this scheme and have not requested an mitigation (ie they have not requested a financial contribution).

Heritage

- 16.99 Both Core Strategy Policy ENV1 and Development Plan Policy DP14 seek to conserve and enhance Colchester's historic Environment. Development Plan Policy DP14 makes it clear that development will not be permitted that will adversely affect a listed building, conservation area, historic park or garden, or important archaeological remains. Emerging Plan Policy DM16 states that development affecting the historic environment should seek to conserve and enhance the significance of the heritage asset.
- 16.100 The relevant legislation for the review of the application from a heritage perspective includes Planning (Listed Buildings and Conservation Areas) Act (1990), whose Section 66 (1) requires that the decision to grant planning permission for development which affects a listed building or its setting shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
- 16.101 The application site does not contain any listed buildings and is not located in a conservation area, or by a historic park or garden. Whilst there are some listed buildings in Wivenhoe, they are removed from the immediate vicinity of the site therefore it is not considered that either scheme has a material impact on the setting of any listed buildings in the wider area.

Archaeology

- 16.102 In terms of below ground heritage, the applicant has now completed an archaeological trial trenching evaluation in line with CBC's requirements. The Council's in house Archaeologist has reviewed a copy of this report (Colchester Archaeological Trust 2021).
- 16.103 The evaluation revealed archaeological features dating to the Middle Iron Age, Late Iron Age, Roman and medieval/post-medieval periods, largely concentrated in the southern half of the site. This included cremated human remains, and at least one ditched enclosure.
- 16.104 It is therefore considered that there are no grounds to consider refusal of permission in order to achieve preservation in situ of any important heritage assets. However, in accordance with the National Planning Policy Framework (Paragraph 205), any permission granted should be the subject of a planning condition to record and advance understanding of the significance of any heritage asset before it is damaged or destroyed and that is suggested at the end of this report.

RAMS

- 16.105 Development proposals must not have an adverse effect on the integrity of habitat sites. Emerging Plan Policy ENV1 states that development proposals that have adverse effects on the integrity of habitats sites will not be supported.
- 16.106 NP Policy WIV32 requires that all residential development within the zones of influence of Habitats sites will be required to make a financial contribution towards mitigation measures, as detailed in the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS), to avoid adverse in-combination recreational disturbance effects on Habitats sites.
- 16.107 A Recreational disturbance Avoidance and Mitigation Strategy (RAMS) has been completed as part of the plan in compliance with the Habitats Directive and Habitats Regulations. Further to Section 1 Policy SP2, contributions are required from qualifying residential development, within the Zones of Influence as defined in the adopted RAMS, towards mitigation measures identified in the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). The proposed development has been considered in line with Natural England guidance, which concludes that the whole of Colchester Borough is within the zone of influence for the East Coast RAMS and that, unless a financial contribution is secured (to fund avoidance and mitigation measures in line with the RAMS), the proposed development is likely to have a significant effect upon habitat sites through increased recreational pressure, when considered in-combination with other plans and projects.

- 16.108 A contribution is included as part of the s106 requirements (see Section 15 of this report) and the proposed development is therefore considered to be in accordance with emerging policy ENV1 and acceptable in respect of its impact upon habitat sites. In addition to this, on site SANGs are suggested on the layout plan, this being a dog walking area.

Climate Crisis and Sustainability Measures

- 16.109 WIV 26 criterion (iv) states that development is encouraged to incorporate, at the build stage, technologies such as solar panels, which reduce reliance on fossil fuels.
- 16.110 EV charging will be conditioned at one charging point per parking space.
- 16.111 The applicants have submitted an energy statement. A total of total of 84kWp Photovoltaic array across the site will be installed which will ensure a further 10% reduction in energy demand for the residents. The precise location of the PV's will be dealt with via condition to ensure they are installed on the most appropriate roofs for solar gain.
- 16.112 It is also noted that as of the 14th June this year, the updated building regulations will come in to force. The 2022 revisions to Part-L of the Building Regulations consider the overall energy usage of the property. Whilst the uplift to the regulations will make it difficult to achieve compliance with gas and oil-fired boilers it is not impossible, but any such properties would need to be fitted with other energy efficiency measures such as PV or other renewables to demonstrate compliance. This is held to secure compliance with the sentiments of WIV 26(iv).

17.0 Conclusion and Planning Balance

- 17.1 It is accepted that this scheme does not comply fully with the Wivenhoe NP Policy WIV29 as part of the residential area sits outside of the area allocated for such on the policy. That is the section that sits north of the high voltage power lines. Due to land ownership, it also cannot provide some of the linkages the NP requires.
- 17.2 In terms of the planning balance and the **environmental role** of sustainability it is accepted that the scheme will have a minor to moderate adverse impact on landscape interests, however there is only a marginal difference between siting dwellings north of the power lines and siting dwellings no further than the power lines as set out in the LVIA. It is also accepted that there will be a potentially very minor impact on neighbouring amenity and an intensification on the highway network. It is however held that this scheme, subject to conditions suggested, has the potential to be a well-designed, beautiful development befitting this edge of settlement location and has the potential to provide significant Biodiversity Net Gain and Canopy Cover Increase. This scheme will also secure a Landscape and Ecological Management Plan (LEMP) for the Wivenhoe Cross Pits LoWS for the benefit of ecology and the wider community.

- 17.3 In terms of the **economic role**, this scheme will be beneficial as new dwellings equal new residents who will use local and Borough wide facilities. The scheme will also generate new Council Tax receipts and the New Homes Bonus. Limited weight can also be given to the economic benefit that comes from the employment generated in the construction phase.
- 17.4 In terms of the **social role** this scheme provides very convincing benefits, namely the provision of both market housing and provision of affordable housing which form a generous and important contribution to the Councils' housing land supply. Very significant weight should be given to this in the planning balance. In addition, a large area of on-site open space for play and also dedicated land for the provision of sports pitches are a benefit of the scheme that many other developments of a similar quantum do not provide. The scheme also provides a number of contributions that will not only mitigate the development but will provide wider community benefit.
- 17.5 It is officers' opinion that notwithstanding the elements of the scheme that do not accord with the Wivenhoe NP, the scheme still accords with the Development Plan as a whole. No material consideration point toward the refusal of this scheme that will deliver the minimum of 120 dwellings as set out in the NP.
- 17.6 A refusal of the scheme because of the deviations from the NP would not, in officers opinion, be sustainable at appeal and would not deliver the much needed houses (both market and affordable) and the other significant social and environmental benefits as set out above. On that basis, the planning balance tips convincingly in favour of an approval.

18.0 Recommendation to the Committee

- 18.1 The Officer recommendation to the Committee is for:

APPROVAL of planning permission subject to the signing of a legal agreement under Section 106 of the Town and Country Planning Act 1990, within 6 months from the date of the Committee meeting AND subject to the resolution of the concerns of Anglian Water with regards to the outflow of the attenuation basin. No approval will be issued until Anglian Water have confirmed their acceptance of the scheme.

In the event that the legal agreement is not signed within 6 months, to delegate authority to the Head of Service to refuse the application, or otherwise to be authorised to complete the agreement.

The Permission will also be subject to the following conditions for which delegated authority is requested to add to an amend as necessary.

1. Time Limit for Full Permissions

The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2. Approved Drawings

The development hereby permitted shall be carried out in accordance with the details shown on the submitted Drawing Numbers:

Full lists as per Drawing Issue Sheet Rev F

Reason: For the avoidance of doubt and to ensure that the proposed development is carried out as approved.

3. Highways

Prior to commencement of the development a construction traffic management plan, to include but shall not be limited to details of vehicle/wheel cleaning facilities within the site and adjacent to the egress onto the highway, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the agreed plan

Reason: To protect highway efficiency of movement and safety.

4. Highways

Prior to commencement of the development details of a footway/cycleway along Elmstead Road between the Broad Lane Sports Ground and the existing built-up part of Wivenhoe shall be submitted to and approved in writing by the Local Planning Authority

Reason: To protect highway efficiency of movement and safety and to ensure the proposal site is accessible by more sustainable modes of transport such as public transport, cycling and walking.

5. Highways

No occupation of the development shall take place until the following have been provided or completed:

- a) The vehicular and pedestrian access arrangements off Richard Avenue as shown in principle on the planning application drawings
- b) Upgrade to Essex County Council specification the two bus stops which would best serve the proposal site (details shall be agreed with the Local Planning Authority prior to commencement of the development)

- c) Provided it can be delivered to the required highway design standards within the extent of highway and/or land under the control of the applicant, a footway/cycleway along Elmstead Road between the Broad Lane Sports Ground and the existing built-up part of Wivenhoe
- d) Improvements to Footpath 14 Wivenhoe between the proposal site and Colchester Road (details shall be agreed with the Local Planning Authority prior to commencement of the development)
- e) A Travel Plan and Residential Travel Information Packs both in accordance with Essex County Council guidance

Reason: To protect highway efficiency of movement and safety and to ensure the proposal site is accessible by more sustainable modes of transport such as public transport, cycling and walking.

6.Ecology

ACTION REQUIRED IN ACCORDANCE WITH ECOLOGICAL APPRAISAL RECOMMENDATIONS

“All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Ecological Impact Assessment (SES, March 2021), Biodiversity Net Gain Calculation (SES, n.d.) and the Information to Support Habitats Regulations Assessment (SES, March 2021) as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.

This may include the appointment of an appropriately competent person e.g. an ecological clerk of works (ECoW,) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details.”

Reason: To conserve and enhance protected and Priority species and allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species).

7.Ecology

PRIOR TO COMMENCEMENT: CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN FOR BIODIVERSITY

A construction environmental management plan (CEMP: Biodiversity) shall be submitted to and approved in writing by the local planning authority.

The CEMP (Biodiversity) shall include the following.

- a) Risk assessment of potentially damaging construction activities.
- b) Identification of “biodiversity protection zones”.
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
- d) The location and timing of sensitive works to avoid harm to biodiversity features.

- e) The times during construction when specialist ecologists need to be present on site to oversee works.
- f) Responsible persons and lines of communication.
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
- h) Use of protective fences, exclusion barriers and warning signs.
- i) Containment, control and removal of any Invasive non-native species present on site

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority”

Reason: To conserve protected and Priority species and allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 (as amended) and s40 of the NERC Act 2006 (Priority habitats & species).

8.Ecology

PRIOR TO COMMENCEMENT: FARMLAND BIRD MITIGATION STRATEGY A Farmland Bird Mitigation Strategy shall be submitted to and approved by the local planning authority to compensate the loss or displacement of any Farmland Bird territories identified as lost or displaced. This shall include provision of offsite compensation measures to be secured by legal agreement or a condition of any consent, in nearby agricultural land, prior to commencement.

The content of the Farmland Bird Mitigation Strategy shall include the following:

- a) Purpose and conservation objectives for the proposed compensation measure e.g. Skylark nest plots;
- b) detailed methodology for the compensation measures e.g. Skylark nest plots must follow Agri-Environment Scheme option: ‘AB4 Skylark Plots’;
- c) locations of the compensation measures by appropriate maps and/or plans;
- d) persons responsible for implementing the compensation measure.

The Farmland Bird Mitigation Strategy shall be implemented in accordance with the approved details and all features shall be retained for a minimum period of 10 years.”

Reason: To allow the LPA to discharge its duties under the NERC Act 2006 (Priority habitats & species)

9..Ecology

PRIOR TO SLAB LEVEL: BIODIVERSITY MITGATION AND ENHANCEMENT STRATEGY

A Biodiversity Mitigation and Enhancement Strategy for Protected and Priority species shall be submitted to and approved in writing by the local planning authority. The content of the Biodiversity Mitigation and Enhancement Strategy shall include the following:

- a) Purpose and conservation objectives for the proposed enhancement measures;
- b) detailed designs to achieve stated objectives;
- c) locations of proposed enhancement measures by appropriate maps and plans;
- d) timetable for implementation demonstrating that works are aligned with the proposed phasing of development;
- e) persons responsible for implementing the enhancement measures;
- f) details of initial aftercare and long-term maintenance (where relevant).

The works shall be implemented in accordance with the approved details and shall be retained in that manner thereafter.

Reason: To enhance Protected and Priority Species/habitats and allow the LPA to discharge its duties under the s40 of the NERC Act 2006 (Priority habitats & species).

10.Ecology

PRIOR TO OCCUPATION: WILDLIFE SENSITIVE LIGHTING DESIGN SCHEME

A lighting design scheme for biodiversity shall be submitted to and approved in writing by the local planning authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed (through the provision of appropriate lighting contour plans, Isolux drawings and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory.

All external lighting shall be installed in accordance with the specifications and locations set out in the scheme and maintained thereafter in accordance with the scheme. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority.

Reason: To allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species)

11.Ecology

PRIOR TO OCCUPATION: LANDSCAPE AND ECOLOGICAL MANAGEMENT PLAN

A Landscape and Ecological Management Plan (LEMP) for the Wivenhoe Cross Pits LoWS shall be submitted to, and be approved in writing by, the local planning authority prior occupation of the development.

The content of the LEMP shall include the following:

- a) Description and evaluation of features to be managed.
- b) Ecological trends and constraints on site that might influence management.
- c) Aims and objectives of management.
- d) Appropriate management options for achieving aims and objectives.
- e) Prescriptions for management actions.
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).

- g) Details of the body or organisation responsible for implementation of the plan.
- h) Ongoing monitoring and remedial measures. the LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details.

Reason: To allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 (as amended) and s40 of the NERC Act 2006 (Priority habitats & species)

12. Site Waste Management Plan

No material shall be transported off site until a Site Waste Management Plan has been submitted to and approved in writing by the Local Planning Authority. The development then be carried out in complete accordance with the approved plan.

Reason: To ensure the sustainable management of construction waste. The SWMP would be expected to present a site wide approach to address the key issues associated with sustainable management of waste, throughout the stages of site clearance, design, construction and operation, establish strategic forecasts in relation to expected waste arisings for construction, include waste reduction/recycling/diversion targets, and monitor against these, advise on how materials are to be managed efficiently and disposed of legally during the construction phase of development, including their segregation and the identification of available capacity across an appropriate study area.

13. SuDS Condition

No works shall take place except demolition until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and certified as technically acceptable in writing by the SUDs approval body or other suitably qualified person(s). The certificate shall thereafter be submitted by the developer to the Local Planning Authority as part of the developer's application to discharge the condition. No development shall commence until the detailed scheme has been approved in writing by the Local Planning Authority. The approved scheme shall subsequently be implemented prior to occupation and should include but not be limited to:

- Limit discharge rates to 1:1 Greenfield runoff rates for all storm events up to and including the 1 in 100 year rate plus 40% allowance for climate change
 - Provide sufficient storage to ensure no off site flooding as a result of the development during all storm events up to and including the 1 in 100 year plus 40% climate change event.
- Demonstrate that all storage features can half empty within 24 hours for the 1 in 30 plus 40% climate change critical storm event. In case the drain down time is more

than 24 hours then demonstrate that features are able to accommodate a 1 in 10 year storm events within 24 hours of a 1 in 30 year event plus climate change.

- Final modelling and calculations for all areas of the drainage system.
- The appropriate level of treatment for all runoff leaving the site, in line with the Simple Index Approach in chapter 26 of the CIRIA SuDS Manual C753.
- Detailed engineering drawings of each component of the drainage scheme.
- A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.
- An updated drainage strategy incorporating all of the above bullet points including matters already approved and highlighting any changes to the previously approved strategy. The scheme shall subsequently be implemented prior to occupation.

Reason: To prevent surface water flooding and to mitigate any environmental harm that may be caused to the local water environment.

14.SuDS Condition

No works shall take place until a scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works and prevent pollution has been submitted to, and approved in writing by, the local planning authority. The scheme shall subsequently be implemented as approved.

Reason: The National Planning Policy Framework paragraph 167 and paragraph 174 state that local planning authorities should ensure development does not increase flood risk elsewhere and does not contribute to water pollution. Construction may lead to excess water being discharged from the site. If dewatering takes place to allow for construction to take place below groundwater level, this will cause additional water to be discharged. Furthermore the removal of topsoils during construction may limit the ability of the site to intercept rainfall and may lead to increased runoff rates. To mitigate increased flood risk to the surrounding area during construction there needs to be satisfactory storage of/disposal of surface water and groundwater which needs to be agreed before commencement of the development. Construction may also lead to polluted water being allowed to leave the site. Methods for preventing or mitigating this should be proposed.

15.SuDS Condition

Prior to occupation a maintenance plan detailing the maintenance arrangements including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, has been submitted to and agreed, in writing, by the Local Planning Authority.

Should any part be maintainable by a maintenance company, details of long term funding arrangements should be provided.

Reason To ensure appropriate maintenance arrangements are put in place to enable the surface water drainage system to function as intended to ensure mitigation against flood risk. Failure to provide the above required information prior to occupation may result in the installation of a system that is not properly maintained and may increase flood risk or pollution hazard from the site.

16.SuDS Condition

The applicant or any successor in title must maintain yearly logs of maintenance which should be carried out in accordance with any approved Maintenance Plan. These must be available for inspection upon a request by the Local Planning Authority.

Reason To ensure the SuDS are maintained for the lifetime of the development as outlined in any approved Maintenance Plan so that they continue to function as intended to ensure mitigation against flood risk.

17.Solar PV's

Prior to occupation of any of the dwellings, a scheme showing the position and type of solar PV panels shall be submitted to and approved in writing by the local planning authority. No dwellings may be occupied until the PV's are installed and are in full working order.

Reason: To facilitate the move to lower carbon homes which is encouraged by the Wivenhoe Neighbourhood Plan.

18.Landscape Management Plan

Prior to the first occupation of the development, a landscape management plan detailing long term design objectives and management responsibilities for all landscape areas other than small, privately owned, domestic gardens shall be submitted to and agreed, in writing, by the Local Planning Authority. The landscape management plan shall thereafter be carried out as approved at all times.

Reason: To ensure the proper management and maintenance of the approved landscaping in the interests of amenity and the character and appearance of the area.

19.Landscaping

No works shall take place above ground floor slab level until full details of all landscape works have been submitted to and agreed, in writing, by the Local Planning Authority and the works shall be carried out prior to the occupation of any part of the development unless an alternative implementation programme is subsequently agreed, in writing, by the Local Planning Authority. The submitted landscape details shall be in full compliance with the Councils Landscape Guidance Note LIS/C and include:

- Finished levels or contours, where notable changes are proposed.
- Means of enclosure.
- Car parking layouts and other vehicle and pedestrian access and circulation areas.
- Hard surfacing materials.
- Minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc.).
- Proposed and existing functional services above and below ground (e.g. drainage power, communications cables, pipelines etc. Indicating lines, manholes, supports etc.).

- Earthworks (including the proposed grading and mounding of land areas including the levels and contours to be formed, showing the relationship of proposed mounding to existing vegetation and surrounding landform)
- Retained historic landscape features and any proposals for restoration, including the reinforcement, reinstatement, renovation and gapping-up of all hedgerow enclosure to the site.
- Planting plans (drainage and building foundation detailing shall take account of the position of the trees as so indicated) to demonstrate at least 10% canopy cover increase.
- Written specifications.
- Schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate.
- Implementation timetables and monitoring programs.

Reason: To ensure that there is a suitable landscape proposal to be implemented at the site for the enjoyment of future users and also to satisfactorily integrate the development within its surrounding context in the interest of visual amenity.

20.Tree and Hedgerow Protection: General

All existing trees and hedgerows shall be retained throughout the development construction phases, unless shown to be removed on the approved drawing and all trees and hedgerows on and immediately adjoining the site shall be protected from damage as a result of works on site in accordance with the Local Planning Authorities guidance notes and the relevant British Standard. All existing trees and hedgerows shall then be monitored and recorded for at least five years following contractual practical completion of the development. In the event that any trees and/or hedgerows die, are removed, destroyed, fail to thrive or are otherwise defective during such a period, they shall be replaced during the first planting season thereafter to specifications agreed, in writing, with the Local Planning Authority. Any tree works agreed to shall be carried out in accordance with BS 3998.

Reason: To safeguard the continuity of amenity afforded by existing trees and hedgerows.

21.Construction Method Statement

No works shall take place, including any land clearance, until a Construction Method Statement has been submitted to and approved, in writing, by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period and shall provide details for:

the parking of vehicles of site operatives and visitors;
 hours of deliveries and hours of work;
 loading and unloading of plant and materials;
 storage of plant and materials used in constructing the development;
 the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 wheel washing facilities;
 measures to control the emission of dust and dirt during construction; and

a scheme for recycling/disposing of waste resulting from demolition and construction works.

The Construction Method Statement should incorporate the Air Quality and Noise Assessments dated 21 March 2021.

Reason: In order to ensure that the construction takes place in a suitable manner and to ensure that amenities of existing residents are protected as far as reasonable.

22.Limits to Peak Hours Construction Traffic

Due to traffic congestion on Clingoe Hill, no construction deliveries to or from the site shall take place during the peak traffic hours from 07:30 – 09:00am or from 16:00 – 18:30pm on weekdays.

Reason: To ensure that the construction phase of the development hereby permitted is not detrimental to the existing levels of traffic already reaching high peak levels during these times.

23.Hours of Work

No construction deliveries to or from the site, worker vehicle movements, or construction work shall take place outside of the following times;

Weekdays: 08:00-18:00

Saturdays: 08:00-13:00

Sundays and Bank Holidays: No working

Reason: To ensure that the construction phase of the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise at unreasonable hours.

24.No Bonfires

No bonfires are permitted during the site clearance or construction phase.

Reason: In order to ensure that the construction takes place in a suitable manner and to ensure that amenities of existing residents are protected as far as reasonable.

25.EV Charging points

Residential development should provide EV charging point infrastructure to encourage the use of ultra-low emission vehicles at the rate of 1 charging point per unit (for a dwelling with dedicated off road parking) and/or 1 charging point per 10 spaces (where off road parking is unallocated)

Reason: To allow for the charging of low carbon electric vehicles.

26.Archaeology

No works shall take place until the implementation of a programme of archaeological work has been secured, in accordance with a Written Scheme of

Investigation that has been submitted to and approved, in writing, by the Local Planning Authority.

The scheme shall include an assessment of significance and research questions; and:

- a. The programme and methodology of site investigation and recording.
- b. The programme for post investigation assessment.
- c. Provision to be made for analysis of the site investigation and recording.
- d. Provision to be made for publication and dissemination of the analysis and records of the site investigation.
- e. Provision to be made for archive deposition of the analysis and records of the site investigation.
- f. Nomination of a competent person or persons/organisation to undertake the works.

The site investigation shall thereafter be completed prior to development, or in such other phased arrangement, as agreed, in writing, by the Local Planning Authority. The development shall not be occupied or brought into use until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

Reason: To safeguard archaeological assets within the approved development boundary from impacts relating to any groundworks associated with the development scheme and to ensure the proper and timely investigation, recording, reporting and presentation of archaeological assets affected by this development, in accordance Adopted Development Policy DP14 (2010, Revised 2014) and the Colchester Borough Adopted Guidance titled Managing Archaeology in Development (2015).

27.Materials To Be Agreed

No external facing or roofing materials shall be used in the construction of the development hereby permitted until precise details of the manufacturer, types and colours of these have been submitted to and approved, in writing, by the Local Planning Authority. Such materials as may be approved shall be those used in the development.

Reason: In order to ensure that suitable materials are used on the development as there are insufficient details within the submitted planning application.

28.Architectural Detailing

Notwithstanding the details submitted, no works shall commence (above ground floor slab level) until additional drawings that show details of the architectural detailing of the development hereby approved have been submitted to and approved in writing by the Local Planning Authority. Details shall include window details (including details of the depth of reveal and any dormer features); details of mortar and mortar joint; rooflights to be used; doors, cills, arches, rustication / quoins, eaves, verges, ridge, brickwork /stone work detailing, chimneys; recessed/projecting/decorative brickwork and cladding; blank and faux windows;

and any rainwater goods to be used, by section and elevation, at scales between 1:20 and 1:1, as appropriate, are submitted to and approved, in writing, by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved additional drawings.

Reason: Insufficient detail has been submitted to ensure the architectural detailing is of a high quality and where such details are considered important to establishing a benchmark for the character of the buildings in this strategically important and prominent site.

29. Utilities

No works shall commence (above ground floor slab level) until details (including position) of all new plant, extract ducts, vents, grilles and meter housings have been submitted to and approved, in writing, by the Local Planning Authority. The works shall be carried out in accordance with the approved details.

Reason: In the interests of good design and visual amenity.

30. Boundary Treatments

Prior to their installation precise details of all boundary treatments shall have been submitted to and approved, in writing, by the Local Planning Authority. The works shall be carried out in accordance with the approved details.

Reason: To ensure a satisfactory form of development and in the interests of visual amenity.

31. Details of Cycle Storage

No occupation shall take place in each phase of the development hereby permitted until cycle parking for at least 1 no. bicycle per dwelling has been laid out within the site in accordance with details that shall have previously been submitted to and agreed, in writing, by the Local Planning Authority. The agreed cycle parking provisions shall thereafter be maintained and made available for this use at all times.

Reason: There is insufficient detail shown to ensure that there is satisfactory cycle parking available at the site at the time that it becomes occupied.

32. Reporting of Unexpected Contamination

In the event that historic land contamination is found at any time when carrying out works in relation to the development, it must be reported in writing immediately to the Local Planning Authority and all development shall cease immediately. Development shall not re-commence until such times as an investigation and risk assessment has been submitted to and approved in writing by the Local Planning Authority, and where remediation is necessary, a remediation scheme has been submitted to and approved in writing by the Local Planning Authority. Development shall only re-commence thereafter following completion of measures identified in the approved remediation scheme, and the submission to and approval in writing

of a verification report. This must be conducted in accordance with all relevant, current, best practice guidance, including the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers'.

Reason – The site lies on or in the vicinity of where there is the possibility of contamination.

33. Street Name Signs

Prior to the first occupation of any of the dwellings hereby approved street name signs shall have been installed at the junction of the new highway with the existing road network.

Reason: To ensure that visitors to the development can orientate themselves in the interests of highway safety

34. Removal of PD for All Residential Extensions & Outbuildings

Notwithstanding the provisions of Classes A, B, C, D and E of Part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (or the equivalent provisions of any order revoking and re-enacting that Order), no extensions, ancillary buildings or structures shall be erected unless otherwise subsequently approved, in writing, by the Local Planning Authority.

Reason: In the interest of visual amenity and to ensure the development avoids an overdeveloped or cluttered appearance.

35. Removal of PD - Residential Outbuildings, Enclosures and Pools

Notwithstanding the provisions of Article 3, Schedule 2 Part 1 Classes A, B and E of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no provision of buildings, enclosures, swimming or other pool shall be erected except in accordance with drawings showing the design and siting of such building(s) which shall previously have been submitted to and approved, in writing, by the Local Planning Authority.

Reason: The site is already heavily constrained and developed and any further development on the site would need to be considered at such a time as it were to be proposed.

36. Removal of PD for Open Plan Fences/Walls

Notwithstanding the provisions of Class A of Part 2 Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (or the equivalent provisions of any order revoking and re-enacting that Order), no fences, walls, gates or other means of enclosure, other than any shown on the approved drawings, shall be erected in advance of any wall of the dwelling to which it relates (including a side or rear wall) which faces a highway (including a footpath or

bridleway) unless otherwise subsequently approved, in writing, by the Local Planning Authority.

Reason: In the interests of visual amenity with regard to the context of the surrounding area.

19.0 **Informatives**

19.1 The following informatives are also recommended:

1. ZT0 – Advisory Note on Construction & Demolition

The developer is referred to the attached advisory note *Advisory Notes for the Control of Pollution during Construction & Demolition Works* for the avoidance of pollution during the demolition and construction works. Should the applicant require any further guidance they should contact Environmental Control prior to the commencement of the works.

2. ZTA - Informative on Conditions Stating Prior to Commencement/Occupation

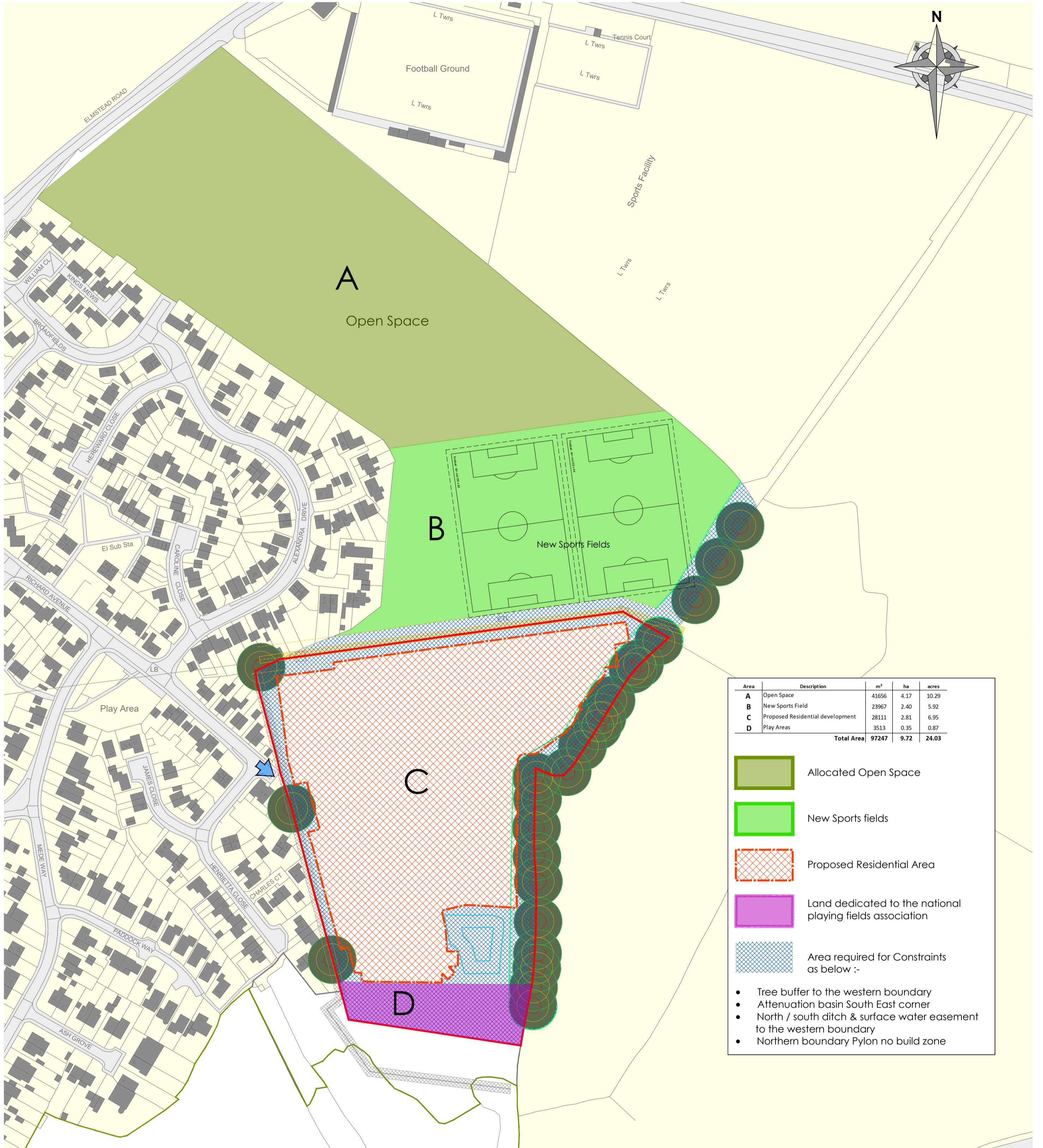
PLEASE NOTE that this permission contains a condition precedent that requires details to be agreed and/or activity to be undertaken either **before you commence the development or before you occupy the development**. This is of critical importance. If you do not comply with the condition precedent you may invalidate this permission and be investigated by our enforcement team. Please pay particular attention to these requirements. To discharge the conditions and lawfully comply with your conditions you should make an application online via www.colchester.gov.uk/planning or by using the application form entitled 'Application for approval of details reserved by a condition following full permission or listed building consent' (currently form 12 on the planning application forms section of our website). A fee is also payable, with the relevant fees set out on our website.

3. ZTB - Informative on Any Application With a Site Notice


PLEASE NOTE that a site notice was erected in a publicly visible location at the site. Colchester Borough Council would appreciate your co-operation in taking the site notice down and disposing of it properly, in the interests of the environment.



Appendix 3 Constraints Plan (Drawing no. TW027-AP-05)



Area	Description	m ²	ha	acres
A	Open Space	41656	4.17	10.29
B	New Sports Field	23967	2.40	5.92
C	Proposed Residential development	28111	2.81	6.95
D	Play Areas	3513	0.35	0.87
Total Area		97247	9.72	24.03

-  Allocated Open Space
-  New Sports fields
-  Proposed Residential Area
-  Land dedicated to the national playing fields association
-  Area required for Constraints as below :-
 - Tree buffer to the western boundary
 - Attenuation basin South East corner
 - North / south ditch & surface water easement to the western boundary
 - Northern boundary Pylon no build zone



Project:-
 Wivenhoe, Land South of Elmstead Road, off Richard Avenue
 Description:-
Proposed revised Allocation Plan

Scale:-
 NTS @ A2
 Date:-
 Nov 2021
 Drg no:-
 TW027-AP-05
 Revision:-
 00



Appendix 4 Pre-Application Response

Planning Policy Comments

Location: Land behind Broadfields, Wivenhoe

Proposal: PE for 120 dwellings and sports fields

Planning Policy comments are sought for proposed residential development at land behind Broadfields, Wivenhoe. The site is allocated in the adopted Wivenhoe Neighbourhood Plan for 120 dwellings on 4.06ha of land, 2ha of new sports fields, a play area and open space. The planning agent has discussed early proposals with Wivenhoe Town Council and has explained the reasons they are seeking a variation to figure 35 of the neighbourhood plan. This response provides a Policy view from Colchester Borough Council's Planning Policy team.

The proposal should be in accordance with the development plan: the Wivenhoe Neighbourhood Plan and the Colchester Local Plan. The Wivenhoe Neighbourhood Plan was adopted in 2019 and is therefore up to date. As part of the neighbourhood plan examination, the examiner found that the Wivenhoe Neighbourhood Plan is in conformity with the Colchester Local Plan and NPPF (albeit the 2012 version).

The views of Parish/Town Councils are always important and in this case the Town Council are also the development plan authors. They selected preferred sites to deliver Wivenhoe's housing needs based on many considerations, including discussions with landowners about the achievement of the objectives of the neighbourhood plan and achievement of sustainable development that provides necessary facilities for new residents and connects new housing with the rest of the town.

Whilst compliance with all relevant policies in the neighbourhood plan will be required, the most relevant policy is WIV 29: Land behind Broadfields, which is set out below.

“POLICY WIV 29: Land behind Broadfields

The land behind Broadfields shown in Figure 35 totalling 4.06 hectares is allocated for a minimum of 120 dwellings subject to the following conditions:

- (i) a minimum of 45 dwellings shall be provided with one or two bedrooms which should be designed as homes suitable for older people, single people, or for young couples. They could be bungalows, terraced properties or apartments; and
- (ii) the number of dwellings with four bedrooms or more shall not exceed 25 (these could include an office for home-working and / or an annexe to accommodate a relative); and
- (iii) dwellings, of whatever size, designed for older residents or active retirees should preferably be built to the Lifetime Homes standard; and
- (iv) 20% of all properties should be affordable housing or that percentage relevant under national or Borough policies at the time the planning application is submitted subject to viability considerations; and

- (v) it can be demonstrated that the development will not have a detrimental impact on wildlife, as evidenced through an appropriate wildlife survey; and
- (vi) vehicle access into the residential part of the site shall be provided from Richard Avenue; and
- (vii) 2 hectares of land to the northern part of the site adjacent to Broad Lane Sports Ground as indicated on Figure 35 shall be provided for additional sports pitches; and
- (viii) a dedicated footpath / cycleway along Elmstead Road to link up Broad Lane Sports Ground with the built-up part of Wivenhoe shall be provided; and
- (ix) a shared-use footpath and cycle track shall be provided directly linking the development to the facilities at Broad Lane Sports Ground and linking with the public footpath to the south of the site; and
- (x) a contribution shall be paid towards the creation of a combined footpath/cycle track linking the new development to the public footpath (FP No. 14) from The Cross; and
- (xi) contributions towards open spaces, sports, recreational facilities and community facilities shall be required in line with Borough Policies current at the time any application for planning permission is made.

Proposals to include some self-build plots within this site allocation will also be supported.”

Policies WIV 8 and WIV 9 are also relevant:

“POLICY WIV 8: Protection of Open Spaces, Play Areas, Sports Fields & Allotments

Those areas shown as Open Space, Play Areas, Sports Fields and Allotments on the Wivenhoe Proposals Map (Figure 21) shall be protected from development unless:

- (i) the proposal would not result in the loss of an area important for its amenity, including its contribution to the green infrastructure network and to the townscape character of the area unless one of the following circumstances applies; and
- (ii) alternative and improved provision is provided in a location well related to the functional requirements of the relocated use and its existing and future users or
- (iii) an assessment of the open space or playing field has been undertaken and this clearly shows the area to be surplus to requirements or
- (iv) In the case of the school playing fields at Broomgrove School and Millfields School the land is required for school expansion.”

“POLICY WIV 9: Provision of Additional Sports Pitches, Play Areas & Allotments

Otherwise acceptable development proposals in Wivenhoe Parish will be supported where they contribute to the cost of providing additional sports / recreation land and /

or facilities in the Wivenhoe Parish to mitigate the impact of development through Section 106 contributions and or secured through a Community Infrastructure Levy as appropriate."

Policy WIV 29 sets out numerous conditions that should be met. Figure 35 in the neighbourhood plan, which is an extract from the policies map, and is referred to in policy WIV 29, shows open space to the north of the site, adjacent to the existing Broad Lane sports ground, new sports fields to the south of this, with the eastern end adjacent to the football ground and residential to the south. The supporting text to policy WIV 29 states that the continued allocation of open space to the north of the site will enable it to come forward for sports pitches, which are being sought by Wivenhoe and District Sporting Facilities Trust, which manage the Broad Lane sports ground.

The residential allocation relates fairly well to the settlement boundary, with access from Richard Avenue. The play area includes a mown area with football goals and benches, which is currently used for recreation. The provision of sports fields to the north of the site, adjacent to the existing Broad Lane sports ground, is compatible with the surroundings both in terms of the provision of sports fields adjacent to the existing sports field and also in providing a soft edge to Wivenhoe and seeking to contain new residential development and avoid development on the adjacent local wildlife site.

The Planning Policy view is that meeting the criteria (conditions) in policy WIV 29 is essential as this will contribute towards meeting the objectives of the neighbourhood plan and the community's aspirations for Wivenhoe. Developing housing on the residential allocation and the sports fields or open space allocations would be contrary to policy WIV 29 and would not be supported by Planning Policy.

However, in principle it is considered that 'swapping' parts of the allocations to respond to site constraints and deliver a quality scheme that meets the policy criteria, would be acceptable. Acceptability in principle is dependent on the provision of 120 dwellings, open space and 2ha of sports fields within the site allocation boundary, and providing that the proposal relates well to the site and surroundings, provides pedestrian connections to the existing settlement and sports ground, meets the rest of the criteria in the policy and complies with other relevant policies.

Policy WIV 29 refers to 'a minimum of 120 dwellings' yet references in the supporting text refer to 'up to 120 dwellings'. Reference to a minimum was added by the neighbourhood plan examiner. This does reflect the policy requirement for a density of 30dph on 4.06ha of land. A higher density than 30dph would not be suitable in this location as it would be incompatible with surrounding development.

The neighbourhood plan examiner amended all references to dwelling numbers in the site allocation policies to refer to minimum numbers for each of the residential site allocation policies. In her report she states, in relation to the first site allocation policy:

"The policy should not impose a cap on development numbers. This is because any scheme should be design-led and land used effectively and efficiently. More detailed

work may result in less than 25 units coming forward, but equally a handful more may result in a higher quality scheme.”

This is an important point and whilst it is made to the first site allocation in the neighbourhood plan, it is also of relevance to this site and indeed the other site allocations. The figure of 120 dwellings is not a rigid figure and detailed work may result in slightly more or less dwellings coming forward.

If site constraints genuinely prevent a design solution that conforms to figure 35 of the neighbourhood plan the agent/developer is encouraged to discuss this further with both the Town Council and LPA, demonstrating that the amount of open space/ sports fields allocated will not be lost and that the policy criteria will be met. The agent/developer could give consideration to how swapping the land uses around could result in an improved solution in terms of connection with the existing sports field and possibly addressing the Town Council’s desire for improved car parking for the sports field and/ or a contribution towards a new community hall in this part of Wivenhoe. This ties in with paragraph 17.34 of the Wivenhoe Neighbourhood Plan, which states: “In addition, as a condition of planning consent, the developer will be required to make a contribution towards the improvement of community facilities. This could include the provision of a new hall for sports and other social recreational activity at Broad Lane Sports Ground.”

The applicant may also wish to consider the option of providing additional sports fields to the 2ha required by policy WIV 29 on the land allocated as open space. It is suggested that if this option is pursued early discussions should take place with Wivenhoe Town Council and the Wivenhoe and District Sporting Facilities Trust.

Planning Policy Team

4 June 2020