
Proof of Evidence of James Firth

November 2022

PINS reference: APP/A1530/W/22/3305697

LPA reference : 210965

Our reference: 615247

Site Address: Land at Broadfields, Wivenhoe, Colchester

Appellant: Taylor Wimpey UK Ltd

LPA: Colchester Borough Council

Inquiry Start Date: 13th December 2022

Proof of Evidence of James Firth

Land at Broadfields, Wivenhoe, Colchester

PINS Reference: APP/A1530/W/22/3305697



Contents

Summary Proof	1
1. Witness Name and Qualifications	7
2. Introduction	8
3. Site and Surrounding Area	10
4. Background	12
5. Appeal Proposals	13
6. Relevant Planning Policies	18
7. Planning Assessment	24
8. Response to Third Parties	46
9. Planning Balance	50
10. Section 106 Contributions, CIL and Conditions	52
11. Conclusion and Summary	53
12. Declaration	54

List of Appendices

- Appendix JF1: Development Areas plan (Drawing TW027-PL-20 Rev C), prepared by JCN
- Appendix JF2: Peel Investments v Secretary of State for Housing, Communities & Local Government [2020] EWCA Civ 1175
- Appendix JF3: Wavendon Properties Ltd v Secretary of State for Housing Communities and Local Government and another [2019] EWHC 1524 (Admin), [2019] PTSR 2077
- Appendix JF4: Wivenhoe Neighbourhood Plan – Figure 35, JCN Mark up
- Appendix JF5: Standard Methodology, prepared by Savills Research Department
- Appendix JF6: WEM Appeal Decision (APP/L3245/W/20/3263642)
- Appendix JF7: DLUPH&C: Table 1011C Additional Affordable Housing Supply
- Appendix JF8: Local Services Map prepared by Savills
- Appendix JF9: Constraints Map (Drawing TN027-AP-PL07 Rev A) prepared by JCN
- Appendix JF10: JCN Comments on Wivenhoe Town Councils' Alternative Layout Maps (Options 1 and 2)
- Appendix JF11: Haydens Comments on Wivenhoe Town Councils' layout options
- Appendix JF12: SES Opinion on Wivenhoe Town Councils' Drainage Solutions
- Appendix JF13: Stormor Opinion on Wivenhoe Town Councils' Drainage Solutions
- Appendix JF14: Sewer Records, prepared by Anglian Water
- Appendix JF15: Pre-Development Enquiry from Anglian Water
- Appendix JF16: Economic Benefits Infographic prepared by Taylor Wimpey

Summary Proof

This appeal relates to a detailed planning application for the development on 120 new homes at Land at Broadfields, Wivenhoe, Colchester. The appellant Taylor Wimpey lodged an appeal against Colchester Borough Council's refusal of planning permission.

Following the submission of the appeal a Statement of Common Ground for Planning and Landscaping have been jointly prepared. The matters in dispute between the parties are:

- Whether the proposals represent a development that accords with the Development Plan as a whole as referenced in NPPF paragraph 11 (c).
- The areas of conflict with parts of the adopted CBC Local Plan and Wivenhoe Neighbourhood Plan insofar as the proposals depart from the site allocation and provide residential development outside of the settlement boundary; any alleged harm resulting from this, and the weight to be given to this factor in decision making,
- The extent of landscape impact of the proposal and the weight to be attributed to this.
- Relevant material considerations such as the on site construction constraints and the weight to be given to these in decision making.
- Lack of section 106 agreement to mitigate certain impacts of the development.
- Planning balance having regard to the above and any other material considerations

In relation to the Section 106 Agreement this is being progressed jointly by the Appellant, the Council and Essex County Council and will be provided to the Inspector before the start of the Inquiry.

Planning applications and appeals must be determined in accordance with the development plan, unless material considerations indicate otherwise (section 38(6) of the Planning and Compulsory Purchase Act 2004 read with s. 70 (2) of the Town and Country Planning Act 1990).

Detailed design work as part of the planning application has identified the following technical constraints:

- 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 as required by HSE (**Core Document 8.1**).
- The eastern boundary is populated by Category A and B trees and the root protection zones extend into the allocated residential area .
- A large proportion of the southern part of the site is dedicated to the national playing fields association (Fields in Trust) which prevents its development. Furthermore it cannot be developed by Taylor Wimpey as it is outside of their control.
- Along the western boundary, the developable area is reduced further by no build zones along the existing water easements of 5 metres.

Proof of Evidence of James Firth

Land at Broadfields, Wivenhoe, Colchester

PINS Reference: APP/A1530/W/22/3305697



- In addition the engineers have advised that an attenuation basin of 1,986m³ is required be provided in the south eastern corner to address the technical drainage and flood requirements which arise with residential use.

As a result of these constraints the proposals, and for the reasons set out in my evidence, I do not consider that the site allocation is capable of delivering all of the prescriptive requirements of the allocation in the land in Policy WIV29. Notwithstanding this, I set out the proposals remain in conformity with the policy and the development plan as a whole. These constraints are a significant material consideration, alongside the other benefits of the appeal scheme, they greatly outweigh the variation in disposition of uses when compared with that shown in the Neighbourhood Plan. Therefore to allow the appeal in these circumstances would accord with the development plan, as well as both the NPPF and the PPG.

To address the matters in dispute, my Proof sets out the following considerations in support of the appeal.

The Proposal Complies with the Development Plan as Whole

In my evidence I set out the policies within the development plan that I consider relevant to the decision. In this case, since the issue of the CBC decision notice, the Section 2 Local Plan has now been adopted which has altered this assessment. Policies within the Development Plan will include those the Section 1 Local Plan, Section 2 Local Plan, and the Wivenhoe Neighbourhood Plan. I also then consider which policies should be considered most important for the purposes of this decision

Following which I then consider whether those policies should be considered out of date. Policies can be out of date for various reasons. This can include due to lack of five year housing land supply, as set out by footnote 8 of the NPPF which it is accepted is not the case here. Policies can also be out of date due to conflict with the NPPF or through being overtaken by events as set out in *Peel Investments v Secretary of State for Housing, Communities & Local Government* [2020] EWCA Civ 1175. This judgment found that policies are out-of-date for the purposes of paragraph 11d of the NPPF if they have been overtaken by events that have happened since the plan was adopted, either on the ground or through a change in national policy, or for some other reason, so that they are now out-of-date. It was also found that whether a policy is out-of-date and, if so, with what consequences, are matters of planning judgement, not dependent on issues of legal interpretation.

In *Wavendon Properties Ltd v Secretary of State for Housing Communities and Local Government and another* [2019] EWHC 1524 (Admin), [2019] PTSR 2077, Dove J. sets out the first step in decision making is to identify the policies that are the most important for determining the application; the second is to examine each of those policies to see if it is out-of-date; and the third is to stand back and assess whether, taken overall, those policies could be concluded to be out-of-date for the purposes of the decision. The task therefore involves the identification of the basket of most important policies based on which the decision to be taken.

Proof of Evidence of James Firth

Land at Broadfields, Wivenhoe, Colchester

PINS Reference: APP/A1530/W/22/3305697



In this case, there are elements of Policy WIV29 and SS16 that have either been overtaken by events, including the additional technical information on constraints that is now available at detailed design stage, or in the case of Policy SS16, that are inconsistent with the Framework in that they fail to properly allow for the consideration of material considerations.

Whilst the above must in my planning judgement be considered when seeking to consider these policies, when assessed as a whole, alongside the other relevant policies from the Development Plan, I do not consider the most important policies to be out of date.

Subject to the consideration of the relevant policies as a whole, and the proper application of material considerations, the development plan does therefore provide relevant up to date policies. For this reason I do not consider the titled balance at paragraph 11(d) applies. The application should therefore be determined in accordance with the development plan as a whole, taking into account paragraph 11c of the NPPF and other material considerations as required by Section 38(6).

I set out that in this case the proposals are considered to accord with the Development Plan as a whole. Paragraph 11 c states that development that accords with an up to date development plan should be approved without delay.

I note in my evidence there are areas of some conflict with part of the criteria in Policy WIV29. The proposals however remain in conformity with Policy WIV29 and the development plan when considered as a whole. That also reflects the views of officers when they considered this proposal, in their report to the planning committee.

In addition to this there are material considerations that provide sound justification as to why the entirety of the prescriptive criteria in Policy WIV29 cannot be fully complied with, and why in particular an element of development to the north of the previously intended extent of residential development is now appropriate. As noted above, there is broad accord with this policy and with the development plan as a whole. However, even if a different view were to be taken of this there are, in any event, material considerations that Section 38(6) requires are considered as part of decision making.

Those material considerations include technical and construction constraints. Information on these has been previously submitted as part of the planning application process, and where relevant information is also appended to this appeal statement. In particular in response to the comments from Third Parties regarding the constraints and the available options for development to overcome them.

The proposals are otherwise considered to be in conformity with the Development Plan and meet relevant design standards as per the agreed Statement of Common Ground.

The extent of any harm resulting from inability to fully meet all of WIV29 criteria and the location of an area of development outside of the previously intended residential area is also a material consideration.

Proof of Evidence of James Firth

Land at Broadfields, Wivenhoe, Colchester

PINS Reference: APP/A1530/W/22/3305697



By contrast to the officers report, in respect of harm, the Council's decision notice on the application states the proposal *"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"*.

As set out above I do not consider the proposals contrary to the development plan when assessed as a whole. In respect of the non compliance with element of WIV29 and the location of residential development further to the north, the technical considerations as to the achievability of development on the parcel are relevant material considerations that provide justification for the proposals. These do not lack justification, especially when considered alongside the policy requirement to achieve a minimum of 120 homes as set out in Policy WIV29. No further explanation is provided by CBC as to why this would be considered "intrinsically harmful" and/or undermine the recently made WNP. I consider the proposals are as whole in conformity with the WNP, and the non delivery of 120 homes here would cause greater harm to the WNP than the appeal proposals. The proposal is not premature and does not otherwise harm the development plan as per NPPF para 49. All proposals must always be assessed on their own merits at the time of application in accordance with statutory requirements.

Material Planning Considerations

Having regard to the above, I consider the main issue that is expected to be debated at the inquiry, relates to the disposition of land uses within the area identified in Figure 35 of the Neighbourhood Plan, and the extent and the impacts of residential development which extends north of the allocated area.

I consider that the physical constraints of the site, materially inhibits the effective delivery of the residential development having regard to the prescriptive parameters set by the Neighbourhood Plan in Policy WIV29.

These are limited variances, when considered against the development plan as a whole. In my professional judgment the assessment of the proposal as a whole including all relevant policy considerations and the multitude of other planning and public benefits of the appeal scheme, result in conformity with the development plan.

Whilst not part of the statutory development plan the NPPF is a significant material consideration to the assessment of the proposals.

Landscape Impact

Landscape matters are dealt with by Ms Ross and I have considered her evidence in my assessment.

With regards to landscape harm I defer to the evidence of Ms Ross. This demonstrates that:

Proof of Evidence of James Firth

Land at Broadfields, Wivenhoe, Colchester

PINS Reference: APP/A1530/W/22/3305697



“the anticipated effects of the Appeal Scheme along with the likely effects of development as anticipated by the Neighbourhood Plan, on both landscape and visual amenity I find that the difference in any effects to be very limited. Elmstead Road, is not in my opinion a sensitive receptor and neither the landscape or the views towards it from Elmstead Road, will be harmed by the Appeal Scheme, as alleged within the reason for refusal”.

Planning Benefits

I demonstrate that the scheme would deliver several major planning benefits, all of which I afford between moderate and very substantial weight in the planning balance. There are all significant material considerations which weigh heavily in favour of the scheme. These benefits include:

1. Delivery 120 new homes which will contribute towards CBC’s housing targets, specifically Wivenhoe’s need in line with the minimum requirements set out in WIV29 –**Very Substantial** weight in the planning balance due to the unmet housing need;
2. Provision of 20% affordable housing in accordance with the site allocation, making a substantial contribution towards pressing housing need and assisting current wait lists – **Very Substantial** weight in the planning balance due to unmet affordable needs;
3. A very substantial quantum of new publically accessible high quality realm and landscaping will be provided, including formalised public access to the LoWS and very generous tree planting and soft landscaping– **Very Substantial** weight in the planning balance;
4. Achieving a Biodiversity Net Gain score of 35.88% (above the emerging requirements). – **Significant Positive** weight in the planning balance
5. Surface Water flood risk and drainage controlled appropriately through an engineered design, achieving a betterment on site– **Moderate** weight in the planning balance;

Planning Balance and Conclusion

My evidence addresses the planning matters arising and has sought to balance the benefits of the scheme against the potential and perceived harm identified by the Council and third parties.

I consider that the third party representations do not raise any further material issues that would render the development unacceptable in planning terms.

I have given consideration as to whether there are other material considerations associated with the proposals which are sufficient to outweigh the identified policy conflict.

As such, whilst there is disposition with the requirements of the site allocation in the Neighbourhood Plan

As outlined, the appeal proposals will also deliver a range of planning benefits which represent important material considerations which weigh heavily in favour of the appeal.

Proof of Evidence of James Firth

Land at Broadfields, Wivenhoe, Colchester

PINS Reference: APP/A1530/W/22/3305697



The potential impacts of the appeal scheme have been assessed and I have concluded that the alleged harm to the landscape is overstated. There are significant material considerations in support of the appeal proposal which I consider weigh heavily in its favour. The planning balance in my opinion strongly supports this viable and deliverable proposal being granted planning permission in accordance with the Development Plan as a whole and Section 38 (6) of the Planning and Compulsory Purchase Act 2004.

On the basis of my assessment set out in my Proof and other supporting evidence submitted in support of this appeal, my firm view is that appeal proposals constitutes sustainable development and should be granted planning permission.

1. Witness Name and Qualifications

- 1.1 I am James Firth. I am instructed by Taylor Wimpey UK (the Appellant) in respect of the proposed development at Land at, Broadfields, Wivenhoe, Colchester.
- 1.2 I am a Chartered Town Planner, member of the Royal Town Planning Institute and Director of Savills UK which is a global real estate services provider listed on the London Stock Exchange and offering a broad range of specialist advisory, management and transactional services to clients all over the world. I am based in the Savills Chelmsford Office and provide town planning consultancy advice to a wide range of clients.
- 1.3 I hold a BA (Hons) degree in Geography from the University of Southampton and a MSc in Spatial Planning from University College London.
- 1.4 I have 17 years' experience in planning, working primarily within Essex throughout this period. This has included Local Authority roles in Planning Policy and Development Management at Rochford District Council and Colchester Borough Council, for 2 years and 5 years respectively.
- 1.5 Prior to joining Savills I spent 9 years in planning consultancy roles at Strutt & Parker most recently as Director and Head of Chelmsford and National Planning. I have good local knowledge of the Colchester Borough having worked and lived in the Essex area for a long period.
- 1.6 I am familiar with the site and surrounding area, the relevant national, regional and local planning policy framework, as well as the circumstances affecting the consideration of the appeal proposals. My evidence relates to the planning issues associated with this appeal. It should be read in conjunction with the evidence of the Appellant's other witness, namely:
 - Vanessa Ross, ARC
- 1.6 Having read the evidence of this witness, I utilised her evidence having regard to its subject matter for the purposes of my overall of my assessment of the overall planning balance in support of this appeal.
- 1.7 I understand my duty as an expert witness in this inquiry and have complied with that duty. I confirm that, insofar as the facts stated in my evidence are within my own knowledge, I have made clear which they are and I believe them to be true, and that the opinions I have expressed represent my own professional opinions.

2. Introduction

2.1 The appeal relates to the comprehensive development of the site known as Land at Broadfields, Wivenhoe, Colchester. An appeal was lodged by Taylor Wimpey UK against the refusal of planning application (LPA reference 210965) by Colchester Borough Council (“CBC”) on 14th June 2022.

2.2 The appeal proposes:

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

2.3 The Statement of Common Ground (SOCG) (**Core Document 6.1**) includes an agreed list of documents which were considered by the CBC as part of the application. This includes documents which were submitted during the determination of the application.

2.4 Several pre-application discussions were held with officers at CBC in advance of the application submission. These are set out in the SOCG.

2.5 Dialogue between both parties took place during the application process and comments received during the consultation process from statutory consultees were addressed by the applicant. The application was reported to the Planning Committee on 9th June 2022 with a recommendation for approval. The Planning Committee resolved to refuse the application against Officer’s recommendations. The application was refused on 14th June 2022 with the following two reasons 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). 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).

3. Site and Surrounding Area

3.1 An agreed description of the appeal site is contained in the SOCG.

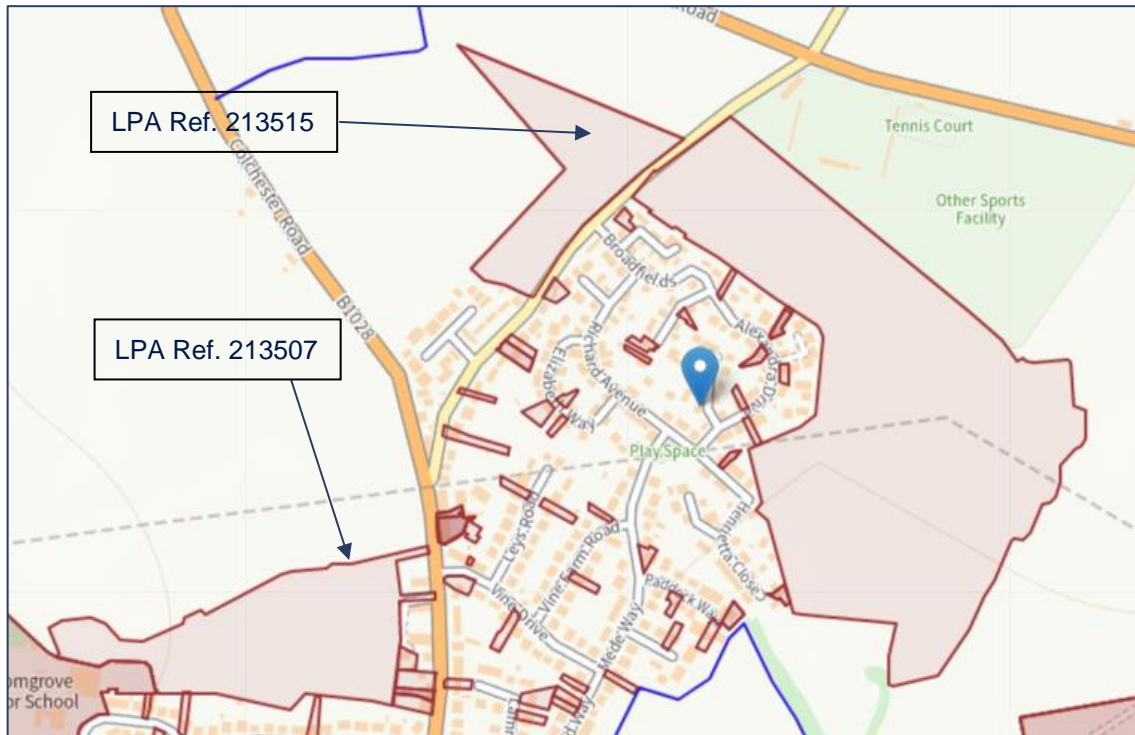
3.2 I would highlight the following aspects of the context of the site as being particularly relevant to my evidence:

- The appeal site is located at the edge the residential area of Wivenhoe. The surrounding area comprises residential development to the west which consists of mostly two storey dwellings at a range of densities, although none of them high. To the north-east is the Broad Lane Sports Ground accessed from Elmstead Road. Wivenhoe town is just over a mile to the south west.
- An electricity pylon is located at the west of the site. A series of overhead wires run over the site from east to west and beyond into the residential area. To comply with Health and Safety Executive (HSE) requirements (**Core Document 8.1**), there is a no build zone of 6 metres on either side of the outer cables. This reduces the developable area to the south of the pylons by 0.2028ha.
- The site comprises agricultural land on the western portion and the eastern section of the site forms part of the non-statutory designated Wivenhoe Cross Pit Local Wildlife Site (LoWS).
- As shown on Figure 3.1 below, immediately to the west of the appeal site, on the opposite side of Elmstead Road, an application (LPA Ref. 213515) was submitted in December 2021 by Manor Oak Homes Ltd. The application is seeking outline planning permission with all matters reserved, except for access, for the construction of a minimum of 25 dwellings with associated open space, landscaping, and infrastructure. This application is still awaiting decision, but was due in March 2022.
- Figure 3.1 also shows another application (LPA Ref. 213507) by Manor Oak Homes Ltd which was submitted in December 2021 at land to the west of Wivenhoe, near to the appeal site, approximately 500 metres west of the site. This application is seeking 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. This application is also currently under consideration, and was also due in March 2022.

Proof of Evidence of James Firth

Land at Broadfields, Wivenhoe, Colchester

PINS Reference: APP/A1530/W/22/3305697



▪ Figure 3.1: Nearby planning applications (LPA Ref. 213515 & 213507)

4. Background

4.1 The site is owned by the Appellant, they are committed to securing the development of the site and the sustainable extension to Wivenhoe to deliver much-needed private and affordable homes which people want to live in, the provision of sports pitches and open space.

Pre-Application Consultation

4.2 Prior to the submission of the full planning application for the appeal site, various pre-application discussions were undertaken with CBC officers, as outlined in within the Appellant's Statement of Case.

Determining the Application

4.3 The Appellant submitted a full planning application to CBC on 26th March 2021. Following the submission of additional documents by the appellant, validation occurred on the 19th April 2021, with the validation back-dated to 8th April 2021.

4.4 During determination, the appellant continued dialogue with the LPA to refine the application and make amendments to address consultee comments particularly in relation to urban design, under an extension of time. There was an urban design response on the application which was resolved. This constructive dialogue led to a recommendation for approval from Officers.

4.5 CBC refused the application on 14th June 2022 following refusal at planning committee on 9th June 2022.

4.6 Subsequently, the Appellant lodged an appeal against the refusal on 23rd August 2022.



5. Appeal Proposals

5.1 There is a more extensive account of the appeal proposals in the SOCG. This section highlights the key elements of the proposed scheme.

Residential

5.2 The appeal proposes to deliver 120 dwellings (Use Class C3) with 20% affordable housing.

Residential Typologies and Mix

5.3 The appeal scheme proposes a mix of dwellings typologies and sizes comprising 2, 3 and 4-bedroom homes. A range of compatible tenures will be provided across the layout 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 policy. The proposed housing mix is set out in Table 5.1 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 5.1 Proposed Housing Mix

Affordable Housing

5.4 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. The affordable housing is to be provided as shared ownership (21%), and affordable rent (79%).

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

5.6 It is proposed that the affordable housing provision will be secured via a S106 legal agreement.

Residential Quality and Inclusive Design

5.7 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).

- 5.8 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.

Landscaping

- 5.9 The landscape proposals for the development have been designed by Andrew Hastings and the details of the landscaping proposals are set out in both the landscape Strategy and Landscape Masterplan (**Core Documents 7.2 and 7.3**) submitted in support of the application.
- 5.10 The landscaping proposals comprise three elements: private amenity spaces, public open spaces and land for sports pitches, as per the principles established by the Neighbourhood Plan.

Private Amenity

- 5.11 All houses proposed are provided with policy compliant or larger than policy compliant private amenity space in the form of a garden to the rear protected by a lockable gate in line with DM19. It is considered that all garden sizes proposed are of sufficient size and quality to provide meaningful and useable private amenity space.
- 5.12 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.

Public Open space

- 5.13 The proposed development will include the delivery of a very significant area of high quality public open space comprising of 4.96 hectares of land adjoining the proposed residential development with additional new formal public access to the adjoining Local Wildlife Site, a further 4.32 hectares of land. See **Appendix JF1** for the proposed development areas.
- 5.14 The open space area will be planted with native trees and shrubs, new native hedgerows, diverse grassland/meadows, mown grass paths and retain existing features such as hedgerows and trees as indicated on the Landscape Strategy prepared by Andrew Hastings. 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 open space areas will be accessible to all existing and future residents with a new footpath and cycle way and new points of access.
- 5.15 The proposed scheme will also open up access to the Local Wildlife Site on the eastern boundary. This will also provide protection of the Local Wildlife Site through the incorporation of ecological mitigation and enhancement measures, via planning condition.

Land for Sports Pitches

- 5.16 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.
- 5.17 The Sports Pitches are proposed at the northernmost portion of the site, which is to the north of the location shown within the Neighbourhood Plan. The decision to locate the sports pitches is the result of unforeseen constraints related to the site which are set out in greater detail later in my Proof. 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.
- 5.18 The provision for Sports Pitches in this location is agreed as an acceptable location by CBC and is a matter of common ground. Wivenhoe Town Council understood the benefits of this location and have no objection to this disposition with Figure 35 of the site allocation.

Highways, Access, Servicing, Car and Cycle Parking

- 5.19 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.
- 5.20 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. A separate planning permission would be required for these works.
- 5.21 The site access has been designed to accommodate visits by waste, refuse, emergency and commercial delivery vehicles. The scheme has also been design to accommodate a fire tender as required by Essex Fire and Rescue. Their approval was received on 18th July following the decision being issued as was submitted as part of the appeal to the Inspectorate.

Energy and Sustainability

- 5.22 A combination of demand-reduction measures and energy-efficiency measures will deliver the Applicant's target for on-site reduction in energy. As set out in the Energy Statement Addendum the Development has been designed to generate a total reduction in energy of 13.1% over the Target Emission Rate of Approved Document L (TER ADL) 2013.

Proof of Evidence of James Firth

Land at Broadfields, Wivenhoe, Colchester

PINS Reference: APP/A1530/W/22/3305697



- 5.23 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.
- 5.24 In addition, a total of 84kWp Photovoltaic Array will be installed across the roofs of the buildings on site. It is proposed the precise location of the PVs be dealt with via condition to ensure they are installed on the most appropriate roofs for solar gain.

Ecology

- 5.25 The eastern section of the site forms part of the non-statutory Wivenhoe Cross Local Wildlife Site (LoWS), no development is proposed on that land.
- 5.26 Due to relatively low value of existing habitats on the westernmost part of the wider site, within the allocated land, there is opportunity to deliver measurable net gains.
- 5.27 A Biodiversity Net Gain calculation accompanied the planning application, 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 NPPF's requirement of 'net gains' and the 10% requirement set out in the Environment Act and due to be brought into force by further regulations.
- 5.28 It is considered the scheme will provide suitable biodiversity measures that accords with the development plan and indeed exceeds its requirements.

Trees

- 5.29 There are 23 individual trees, 15 groups of trees, 4 areas of trees and 7 hedges on the site. The trees are of mixed condition and age providing a variety of amenity benefits. All of the existing trees and hedgerows are on or close to the edge of the site.
- 5.30 The arboriculture assets of the site and those along the boundaries have 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

- 5.31 The site is located in Flood Zone 1, at low risk from flooding. A Flood Risk Assessment (FRA) was submitted as part of the application. The FRA 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

Proof of Evidence of James Firth

Land at Broadfields, Wivenhoe, Colchester

PINS Reference: APP/A1530/W/22/3305697



positioned at the lowest point of the site in the south eastern corner and has been integrated into the landscaping scheme.

6. Relevant Planning Policies

- 6.1 The appeal scheme has been designed taking due account of all relevant national and local planning policies. A summary of the relevant policy documents is set out below and the following section demonstrates that the appeal scheme is compliant with these policies.
- 6.2 Planning law requires that planning applications, and 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.
- 6.3 The development plan in the case of the development proposals comprises:
- Local Plan Section 1 - Strategic Plan for North Essex (adopted 2021);
 - Local Plan Section 2 – Colchester Borough Local Plan 2017 – 2033 (adopted 2022);and
 - Wivenhoe Neighbourhood Plan (made 2019).
- 6.4 There are a number of other considerations which are material to the determination of this appeal, including the National Planning Policy Framework (NPPF) (**Core Document 2.5**), the supporting Planning Practice Guidance (PPG) (**Core Document 2.6**), and adopted and emerging supplementary planning guidance.

National Planning Policy

- 6.5 At the national level, the Government published its revised National Planning Policy Framework (NPPF) (**Core Document 2.5**) in July 2021. The NPPF provides an overarching framework for the production of local development plan documents and decision making.
- 6.6 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):

“c) approving development proposals that accord with an up-to-date development plan without delay; or

d) 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:

i. 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

ii. 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.”

- 6.7 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.
- 6.8 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.
- 6.9 NPPF paragraph 13 states that neighbourhood plans should support the delivery of strategic policies contained in local plans or spatial development strategies`

Statutory Development Plan

- 6.10 The Colchester Local Plan 2022 ("CLP") sets out the spatial vision and plan for the future of the borough and how it will be delivered between 2017 and 2033 (16 year plan period). It comprises two parts: Local Plan Section 1 - Strategic Plan for North Essex (adopted 2021) (**Core Document 2.1**) and Local Plan Section 2 - Colchester Borough Local Plan 2017 – 2033 (**Core Document 2.2**).

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

- 6.11 The Strategic Plan for North Essex was formally adopted by a decision at CBC's Full Council meeting on 1st February 2021. The Section 1 Plan (**Core Document 2.1**) includes policies for a Garden Community at Tendring / Colchester Borders.
- 6.12 Policy SP2 of the CLP Section 1 incorporates a presumption in favour of sustainable development and stipulates that the work pro-actively with applicants to find solutions which mean that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area.
- 6.13 Policy SP3 of the CLP Section1 states that Existing settlements will be the principal focus for additional growth across the North Essex Authorities area within the Local Plan period. Development will be accommodated within or adjoining settlements according to their scale, sustainability and existing role both within each individual district and, where relevant, across the wider strategic area.
- 6.14 With regards to housing delivery, Policy SP4 of the CLP Section 2 stipulates that the local planning authorities will identify sufficient deliverable sites, developable sites and/or broad locations for their respective plan period, to meet the housing requirements in the table below, and will incorporate additional provision to ensure flexibility and choice and competition for land. Policy SP4 sets out a annual housing requirement figure of 920 houses per annum to be delivered in Colchester.

- 6.15 With regards to design, Policy SP7 explains that all new development must meet high standards of urban and architectural design. This policy provides a number of placemaking principles which development must adhere to.

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

- 6.16 The Colchester Borough Local Plan 2017 – 2033 was adopted on the 4th July 2022 (**Core Document 2.2**). Policy SS16 which identifies the settlement boundary for Wivenhoe and notes that the Wivenhoe Neighbourhood Plan identifies sites for 250 new dwellings in Wivenhoe.
- 6.17 Policy SG2 of the CLP Section 2 seeks to ensure that the Local Planning Authority will plan, monitor and manage the delivery of at least 14,720 new homes in Colchester Borough between 2017 and 2033.
- 6.18 Policy SP2 of the CLP Section 2 explains that Contributions will be secured from development towards mitigation measures in accordance with the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy 2018-2038 (RAMS).
- 6.19 There are various other policies within the CLP which will be discussed, as relevant, in **Section 7** below.

Wivenhoe Neighbourhood Plan

- 6.20 Wivenhoe Town Council made the Wivenhoe Neighbourhood Plan in 2019 (**Core Document 2.4**). The Plan conformed generally to the strategic policies and proposals of the Development Plan at the time.
- 6.21 The site is allocated by Policy WIV29 of the Neighbourhood Plan as set out in **Figure 6.1** below.
- 6.22 The area covered by WIV29 and Figure 35 in the Wivenhoe Neighbourhood Plans totals 10.88 hectares (as measured by JCN using Neighbourhood Plan Figure 35), including the residential allocation, playing fields and open space areas. This is made up of 4.06 ha of residential allocation (as specified in Policy WIV29), 2.0 ha of playing fields (as specified in Policy WIV29vii), with the remaining area identified as open space (approximately 4.82 ha).
- 6.23 It is common ground that the land use areas on Figure 35 of the Neighbourhood Plan were not checked on digital mapping OS prior to the Neighbourhood Plan being made and their actual sizes are in fact slightly larger than stated, at 4.08ha and 2.2ha respectively. Notwithstanding this, the written sizes have been taken forward in my assessment.
- 6.24 Policy WIV29 sets out the residential area identified as part of the WIV 29 Allocation extends to 4.06 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

Proof of Evidence of James Firth

Land at Broadfields, Wivenhoe, Colchester

PINS Reference: APP/A1530/W/22/3305697



- 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.
- 6.25 Paragraph 17.33 of the Neighbourhood Plan allocation also states that 4.06 hectares of the site has been allocated as land suitable for the erection of 120 dwellings of mixed types and an overall average density of 30 dwellings per hectare.

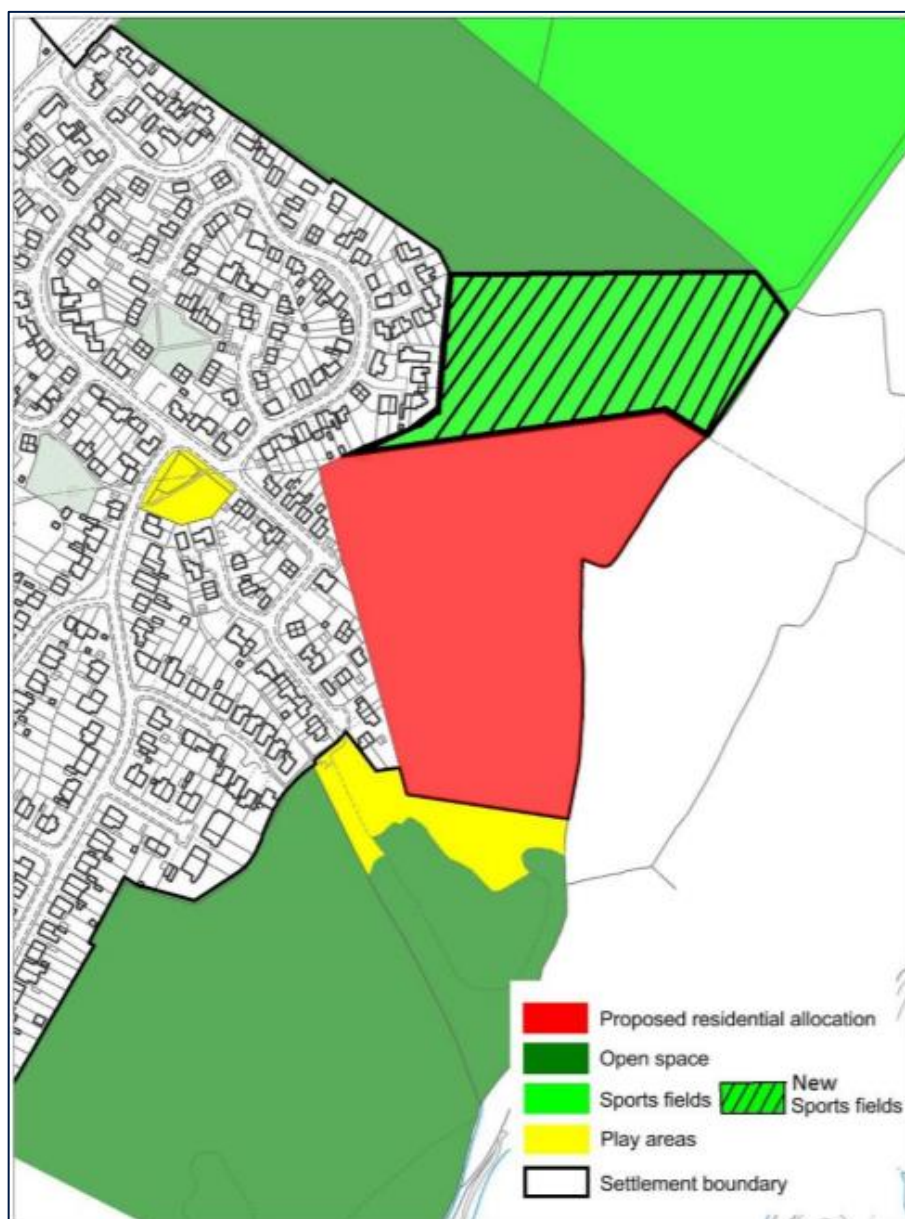


Figure 6.1: Figure 35 of Neighbourhood Plan Site Allocation

Essex Design Guide

6.26 The Essex Design Guide (adopted 2007, updated 2018) (**Core Document 4.5**) provides detailed design advice on the layout, design and spatial principles of new residential and mixed use development. I understand the EDG version formally adopted by CBC is the 1997 edition. The more recent 2018 version in my view remains a relevant material consideration and is also widely used as a reference guide to help create high quality places with an identity specific to its Essex context.

Affordable Housing SPD

- 6.27 The Affordable Housing SPD (adopted 2011) (**Core Document 3.5**) is a material consideration in the determination of planning applications. The document provides detailed guidance on all aspects of the delivery of affordable housing.
- 6.28 CBC is consulting on a new Affordable Housing SPD (**Core Document 3.14**). This notes that allocations within the Emerging Local Plan (n.b now adopted) are expected to comply with Emerging Policy DM8 which requires 30% affordable housing. When adopted SPD will replace the adopted Affordable Housing SPD (2011). It is important to note here that it is agreed as common ground between the Council and the applicant that a 20% affordable housing requirements applies to this site, as per the site's Neighbourhood Plan policy WIV 29.

7. Planning Assessment

Main Matters

7.1 CBC's reasons for refusal are outlined in my proof above. I consider that the matters in dispute between the Appellant and CBC are as follows:

- Whether the proposals represent a development that accords with the Development Plan as a whole as referenced in NPPF paragraph 11 (c).
- The areas of conflict with parts of the adopted CBC Local Plan and Wivenhoe Neighbourhood Plan insofar as the proposals depart from the site allocation and provide residential development outside of the settlement boundary; any alleged harm resulting from this, and the weight to be given to this factor in decision making,
- The extent of landscape impact of the proposal and the weight to be attributed to this.
- Relevant material considerations such as the on site construction constraints and the weight to be given to these in decision making.
- Lack of section 106 agreement to mitigate certain impacts of the development.
- Planning balance having regard to the above and any other material considerations .

7.2 In relation to the Section 106 agreement this is being progressed jointly by the Appellant and CBC and it is anticipated it will be provided to the Inspector before the start of the Inquiry.

7.3 In this section of my evidence I first set out the policies within the development plan that I consider relevant to the decision. In this case, since the issue of the CBC decision notice, the Section 2 Local Plan has now been adopted which has altered this assessment. Policies within the Development Plan will include those the Section 1 Local Plan, Section 2 Local Plan, and the Wivenhoe Neighbourhood Plan. I also then consider which policies should be considered most important for the purposes of this decision,

7.4 Following this I then consider whether those policies should be considered out of date. Policies can be out of date for various reasons. This can include due to lack of five year housing land supply, as set out by footnote 8 of the NPPF which it is accepted is not the case here. Policies can also be out of date due to conflict with the NPPF or through being overtaken by events as set out in *Peel Investments v Secretary of State for Housing, Communities & Local Government* [2020] EWCA Civ 1175 (**Appendix JF2**). This judgment found that policies are out-of-date for the purposes of paragraph 11d of the NPPF if they have been overtaken by events that have happened since the plan was adopted, either on the ground or through a change in national policy, or for some other reason, so that they are now out-of-date. It was also found that whether a policy is out-of-date and,

Proof of Evidence of James Firth

Land at Broadfields, Wivenhoe, Colchester

PINS Reference: APP/A1530/W/22/3305697



if so, with what consequences, are matters of planning judgement, not dependent on issues of legal interpretation.

- 7.5 In *Wavendon Properties Ltd v Secretary of State for Housing Communities and Local Government and another* [2019] EWHC 1524 (Admin), [2019] PTSR 2077, (**Appendix JF3**) Dove J. sets out the first step in decision making is to identify the policies that are the most important for determining the application; the second is to examine each of those policies to see if it is out-of-date; and the third is to stand back and assess whether, taken overall, those policies could be concluded to be out-of-date for the purposes of the decision. The task therefore involves the identification of the basket of most important policies based on which the decision to be taken.
- 7.6 In this case, as I identify later, there are elements of Policy WIV29 and SS16 that have either been overtaken by events, such as the additional technical information on constraints that is now available at detailed design stage, or in the case of Policy SS16, that are inconsistent with the Framework in that they fail to properly allow for the consideration of material considerations.
- 7.7 Whilst the above must in my planning judgement be considered when seeking to consider these policies, when assessed as a whole, alongside the other relevant policies from the Development Plan, I do not consider the most important policies to be out of date.
- 7.8 Subject to the consideration of the relevant policies as a whole, and the proper application of material considerations, the development plan does therefore provide relevant up to date policies. For this reason I do not consider the titled balance at paragraph 11(d) applies. The application should therefore be determined in accordance with the development plan as a whole on a flat balance basis, taking into account paragraph 11c of the NPPF and other material considerations as required by Section 38(6).
- 7.9 I set out that in this case the proposals are considered to accord with the Development Plan as a whole. Paragraph 11 c states that development that accords with an up to date development plan should be approved without delay.
- 7.10 I note in my evidence there are areas of some conflict with part of the criteria in Policy WIV29. The proposals remain in conformity with Policy WIV29 and the development plan when considered as a whole. That also reflects the views of officers when they considered this proposal, in their report to the planning committee.
- 7.11 In addition to this there are material considerations that provide sound justification as to why the entirety of the prescriptive criteria in Policy WIV29 cannot be fully complied with, and why in particular an element of development to the north of the previously intended extent of residential development is now appropriate. As noted above, there is broad accord with this policy and with the development plan as a whole. However, even if a different view were to be taken of this there are, in any event, material considerations that Section 38(6) requires are considered as part of decision making.

Proof of Evidence of James Firth

Land at Broadfields, Wivenhoe, Colchester

PINS Reference: APP/A1530/W/22/3305697



- 7.12 Those material considerations include technical and construction constraints. Information on these has been previously submitted as part of the planning application process, and where relevant information is also appended to this appeal statement. In particular in response to the comments from Third Parties regarding the constraints and the available options for development to overcome them.
- 7.13 The proposals are otherwise considered to be in conformity with the Development Plan and meet relevant design standards as per the agreed Statement of Common Ground.
- 7.14 The extent of any harm resulting from inability to fully meet all of WIV29 criteria and the location of an area of development outside of the previously intended residential area is also a material consideration.
- 7.15 By contrast to the officers report, in respect of harm, the Council's decision notice on the application states the proposal "*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*".
- 7.16 As set out above I do not consider the proposals contrary to the development plan when assessed as a whole. In respect of the non compliance with element of WIV29 and the location of residential development further to the north, the technical considerations as to the achievability of development on the parcel are relevant material considerations that provide justification for the proposals. These do not lack justification, especially when considered alongside the policy requirement to achieve a minimum of 120 homes as set out in Policy WIV29. No further explanation is provided by CBC as to why this would be considered "intrinsically harmful" and/or undermine the recently made WNP. I consider the proposals as a whole in conformity with the WNP, and the non delivery of 120 homes here would cause greater harm to the WNP than the appeal proposals. The proposal is not premature and does not otherwise harm the development plan as per NPPF para 49. All proposals must always be assessed on their own merits at the time of application in accordance with statutory requirements.
- 7.17 With regards to landscape harm I consider the evidence of Ms Ross. This demonstrates that "*the anticipated effects of the Appeal Scheme along with the likely effects of development as anticipated by the Neighbourhood Plan, on both landscape and visual amenity I find that the difference in any effects to be very limited. Elmstead Road, is not in my opinion a sensitive receptor and that the alleged 'harm' stated in the reason for refusal resulting from the change in view from Elmstead Road to be overstated.*"
- 7.18 Having regard to the above, I consider the main issue that is expected to be debated at the inquiry, relates to the disposition of land uses within the area identified in Figure 35 of the Neighbourhood Plan, and the extent and the impacts of residential development which extends north of the allocated area.
- 7.19 I consider that the physical constraints of the site, materially inhibits the effective delivery of the residential development having regard to the prescriptive parameters set by the Neighbourhood Plan in Policy WIV29.

Proof of Evidence of James Firth

Land at Broadfields, Wivenhoe, Colchester

PINS Reference: APP/A1530/W/22/3305697



- 7.20 These are limited variances, when considered against the development plan as a whole. In my professional judgment the assessment of the proposal as a whole including all relevant policy considerations and the multitude of other planning and public benefits of the appeal scheme), result in conformity with the development which the basket of policies are applied.
- 7.21 Of relevance to the assessment of the proposal against other material consideration is national policy. Whilst not part of the statutory development plan the NPPF is a significant material consideration to the assessment of the proposals.
- 7.22 The NPPF sets out clear advice on what development plans should achieve. Paragraph 15 states that:
- “Succinct and up-to-date plans should provide a positive vision for the future of each area; a framework for addressing housing needs and other economic, social and environmental priorities; and a platform for local people to shape their surroundings.”*
- 7.23 To achieve this, paragraph 16 of the NPPF is clear that plans should *“be prepared positively, in a way that is aspirational but deliverable”* (para. 16(b)).
- 7.24 Paragraph 12 of the NPPF states that *“Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.”*
- 7.25 Paragraph 47 of the NPPF also stipulates that *“Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. Decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by the applicant in writing.”*
- 7.26 Another key consideration in the determination of the appeal is paragraph 130 of the NPPF states that planning policies and decisions should ensure that developments *‘are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);’*(para. 130 (c))
- 7.27 I also consider the Council’s claim in the decision notice, that demonstrable landscape harm will result from the proposals, particularly when the site is viewed from Elmstead Road. In this respect I consider the evidence of Ms Ross and also the update Landscape and Visual Impact Assessment addendum (**Core Document 1.18**), dated February 2022. This 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 (**Core Document 1.17**), dated April 2021.
- 7.28 These considerations all feed into a consideration of planning balance. Such homes will assist in meeting the Borough’s identified housing need, particularly regarding affordable housing and needs of the local area and

the Borough as a whole if this site did not come forward. I consider the evidence of Ms Ross that the proposal will not result in an landscape harm above and beyond that which would exist if the residential dwellings were provided in the land allocated by the Neighbourhood Plan, she concludes the “*development of a nature similar to that proposed by the Appeal Scheme and is, by virtue of meeting design and policy criteria, considered acceptable in this area. It is fair to note that a degree of landscape harm must have been deemed acceptable at the time the settlement boundary was amended. I do not consider the introduction of housing north of the boundary identified in WIV 29 to result in any additional landscape harm to that anticipated within the Neighbourhood Plan.*”

Planning Assessment

7.29 Firstly I assess the most important policies of the development plan.

Assessment of the Most Important Policies

7.30 Whilst there are a range of policies that will be relevant to the decision a large number of these are more general management policies that will be relevant to all proposals. Whilst still potentially very relevant to the decision I do not consider these as forming part of the most important policies particularly when having regard to the principle of development. In identifying those policies that I consider most important I have had particular regard to the nature of the proposals, the current use of the site, as well as the current designation of the site on the Council's Policies Map.

7.31 Those policies from the adopted Development Plan that I consider those most relevant are:

- Section 1-
 - SP1 Presumption in Favour of Sustainable Development
- Policy SP3 Spatial Strategy for North Essex
 - SP4- Meeting Housing Needs
 - SP7 Place Shaping Principles
- Section 2
 - SG1 Colchester's Spatial Strategy
 - SG2 Housing Delivery
 - SG8 Neighbourhood Plans
 - SS16 Wivenhoe

Proof of Evidence of James Firth

Land at Broadfields, Wivenhoe, Colchester

PINS Reference: APP/A1530/W/22/3305697



- ENV1 Environment
- DM4 Sport Provision
- DM8 Affordable Housing
- DM9 Development Density
- DM12 Housing Standards
- DM15 Design and Amenity
- DM17: Retention of Open Space and Recreational Facilities
- DM18: Provision of Public Open Space
- DM23: Flood Risk and Water Management
- DM24: Sustainable Urban Drainage Systems
- OV2 Countryside
- Wivenhoe Neighbourhood Plan-
 - WIV 2: Wivenhoe Town Settlement Boundary
 - WIV25 Flooding risk and climate resilience
 - WIV 29 Land Behind Broadfields

7.32 Of the above policies I consider those most important in relation to the principle of development are, Policy SP3 Spatial Strategy for North Essex, SS16 Wivenhoe, ENV1 Environment, WIV 29 Land Behind Broadfields.

7.33 Policy SP3 of the CLP Section1 states that Existing Settlements will be the principal focus for additional growth across the North Essex Authorities area within the Local Plan period. Development will be accommodated within or adjoining settlements according to their scale, sustainability and existing role both within each individual district and, where relevant, across the wider strategic area. The policy references that Section 2 Plans will identify a hierarchy of settlements where development will be accommodated. The Colchester Section 2 Local Plan identifies Wivenhoe as a Sustainable Settlement in Table SG1. Policy SP3 in my view supports development in or adjoining the settlement of Wivenhoe.

7.34 The first part of Policy SS16 largely provides information on the content of the Wivenhoe Neighbourhood Plan. The policy does however go on to state that “Proposals for development outside of the settlement boundary

Proof of Evidence of James Firth

Land at Broadfields, Wivenhoe, Colchester

PINS Reference: APP/A1530/W/22/3305697



will not be supported unless the Neighbourhood Plan or other Local Plan policy specifically allows for it". It also states that "All development proposals in Wivenhoe Neighbourhood Plan Area will be determined against and be required to comply with policies in the Wivenhoe Neighbourhood Plan and any relevant Local Plan policies".

- 7.35 In the case of the appeal site the Broadfields location is of course allocated in the NP under Policy WIV29. With the exception of a small area of residential development to the north of the identified residential allocation, the overall location accords with the policy and Neighbourhood Plan. In respect of the smaller area of residential development beyond the boundary identified in WIV29, Policy SS16 cross references the decision maker to other policies, stating that proposals outside of settlement boundaries will not be supported unless other policies specifically allow for it. It is therefore necessary to consider other policies in the Neighbourhood Plan and Local Plan.
- 7.36 Policy SP3 as set out above allows for development adjoining settlement boundaries and hence there is no conflict in that respect.
- 7.37 Policy ENV1 and part E of that policy is also relevant. This policy also allows for development outside of boundaries within the countryside in circumstances where the intrinsic character and beauty of the countryside will not be adversely affected. There is no overall restriction or prohibition on development outside of boundaries. I also find no conflict in relation to this policy.
- 7.38 Policy OV2 is also stated in the Section 2 plan to deal with land outside of settlement boundaries, this policy states that Residential development proposals in the countryside, outside defined settlement boundaries, will need to demonstrate that the scheme respects the character and appearance of landscapes and the built environment and preserves or enhances the historic environment and biodiversity. Subject to compliance with these considerations residential development outside of the boundary would also not conflict with this policy.
- 7.39 In light of the above, I believe there to be limited conflict with policy SS16, especially given the application site more broadly is identified in policy WIV29 and Figure 35 as a growth location and it is the disposition of uses within the application site that is now a disputed matter at this appeal. The proposals are also compliant with the other development plan policies set out above.
- 7.40 In any case I also note that Policy SS16 does not expressly allow for consideration of material considerations as required by Section 38(6). Given this is a statutory requirement this has the result of potentially rendering those parts of the policy out of date in circumstances where material considerations must be considered by the decision maker. In this case there are a number of important updates in respect of the technical information available for the application site which I set out later and which are in my consideration relevant material considerations.
- 7.41 Policy WIV 29 (Land behind Broadfields) is I consider the most important single policy to the determination of the appeal proposals. This policy sets out a number of criteria including a requirement for "a minimum of 120 dwellings subject to the following conditions".

Proof of Evidence of James Firth

Land at Broadfields, Wivenhoe, Colchester

PINS Reference: APP/A1530/W/22/3305697



7.42 Whilst I do not generally seek to repeat policy in full in my evidence, given the importance of this policy to the matter I set this out in full 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.

7.43 An assessment of the conformity of the proposals with this is provided in the Planning Statement, Appeal Statement of Case and Officers Report. I set out a response below:

7.44 As shown on drawing TW027-PL-04 Rev H the 120 dwellings will comprise of 2, 3 and 4-bedroom houses, responding to the Neighbourhood Plan, as follows:

Proof of Evidence of James Firth

Land at Broadfields, Wivenhoe, Colchester

PINS Reference: APP/A1530/W/22/3305697



- 2 Bed 45 (37.5%)
- 3 Bed 50 (41.7%)
- 4 Bed 25 (20.8%)
- Total 120 (100%)

- 7.45 The proposal accord with parts (i) a minimum of 45 1 or two bedrooms are proposed, (ii) no more than 25 4 bedroom homes are proposed, (iii) 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), (iv) 20% affordable is proposed, (v) and appropriate assessment of wildlife has been undertaken and mitigation and enchantment are incorporated into the conditions, (vi) access is taken from Richard Avenue, and (xi) contributions are proposed in the Section 106 Agreement.
- 7.46 Where there is some conflict with parts (vii), (viii), (ix), (x) these are explained below in this section of my Proof.
- 7.47 The areas of conflict with Policy WIV29 include the first part of the policy where Figure 35 is referenced and it is stated that 4.06ha is allocated for a minimum of 120 homes. The application proposals include residential development on a larger area of land. Whilst this differs from the area identified in Figure 35 the provision of residential homes in this area does not expressly conflict with this part of the policy given it does not state that this area will be otherwise protected.
- 7.48 Figure 35 identifies land to be provided for sport pitches. This is the land on which additional homes are now proposed as part of the application proposals. The playing fields are instead provided on land further to the north. I consider this to be an acceptable approach as it provides for improved relationship with the existing sports provision at Wivenhoe Town Football Club. I consider there a degree of conflict with criteria vii) within the policy given the different land area uses for the playing fields, but given these are still provided in an acceptable manner within the application red line I consider this conflict limited.
- 7.49 Criteria viii), ix) and x) relate to connectivity and potential contributions for improved connectivity, these are dealt with in Section 8 .
- 7.50 Policy WIV29 does not set any minimum requirement within the policy text itself for open space provision. JCN design have however measured the areas from Figure 35 in the NP and find this show approximately 4.6ha for open space. This is in addition to the 2.0 ha for playing fields as referred in the policy wording.
- 7.51 The appeal proposals provide for 2.0 ha for playing field and 4.96 ha for open space as shown in **Appendix JF1**. This proposals therefore exceed the open space provision identified in the Neighbourhood Plan. In addition to this area there is also further access proposed to the wildlife site. This totals 9.28ha or 11.28ha with the sports pitch land included. Public access to all of the open space is a new benefit of the scheme, and it is

Proof of Evidence of James Firth

Land at Broadfields, Wivenhoe, Colchester

PINS Reference: APP/A1530/W/22/3305697



common ground that there is no formal public access to this land at present. The provision of an area of residential development to the north of that area originally identified in the Neighbourhood Plan still provides for playing field in an acceptable manner as per Policy WIV29(vii). It also still provides for an area of open space not only equivalent but in excess to the size of that shown on Figure 35 of the Neighbourhood Plan (**Appendix JF4**).

- 7.52 As set out above, there are limited areas of conflict with parts of Policy WIV29. The vast majority of criteria including the key requirement to deliver a minimum of 120 homes are met by the application proposals.
- 7.53 Based on the above assessment, I consider that whilst there is some conflict with elements of WIV29, the proposals remain in overall conformity with this policy specifically, and also with the Development Plan as whole.
- 7.54 My assessment aligns with the conclusions of the committee report presented to members that *“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.”* (**Core Document 1.1**).
- 7.55 The proposals will importantly allow for 120 homes to be delivered on the site to meet housing needs including 20% affordable housing, which may not otherwise be delivered. This and the other significant planning benefits of the proposals are considered in my assessment of planning balance below.
- 7.56 When considering the ability to comply with WIV29 policy criteria, and notwithstanding the decision of the Inspector on the degree of policy compliance, it is also relevant to consider other material considerations. This includes additional technical information on constraints that is now available that may not have been available to the decision makers on the WNP.
- 7.57 These factors have influenced the design of the proposals including the need to extend a part of the residential development further north than originally identified in the Neighbourhood Plan in order to achieve the required minimum of 120 homes as set out in Policy WIV29.
- 7.58 These are relevant considerations and might be considered to result in some parts of Policy WIV29 being deemed to be overtaken by events, and subsequently be considered out of date for decision making purposes (*Peel Investments v Secretary of State for Housing, Communities & Local Government* [2020] EWCA Civ 1175).
- 7.59 In any event, and even these parts of the policies are not considered to be out of date, there are in any event material considerations that must be considered when applying this policy as required by Section 38(6) TCPA 2004. These are considerations are set out further below.

Material Planning Considerations

- 7.60 As aforementioned, paragraph 12 of the NPPF states that “*Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.*”. Similarly, Paragraph 47, as set out previously also stipulates that planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.
- 7.61 Neighbourhood Plan Policy WIV29 (**Core Document 2.4**), within which the site is allocated, contains a large number of policy requirements that are in many cases very specific. Read strictly, this would place very limited flexibility on subsequent schemes to respond appropriately to detailed design stage constraints within the policy wording. The policy wording does not allow for material considerations to be taken into account should a departure from policy be necessary. Similarly, the wording of Policy SS16 (**Core Document 2.2**) is prescriptive stating that ‘*All development proposals in Wivenhoe Neighbourhood Plan Area will be determined against and be required to comply with policies in the Wivenhoe Neighbourhood Plan and any relevant Local Plan policies*’. Again there is no reference to the consideration of the material consideration, as per Section 38(6), nor acknowledgement of NPPF paragraph 12). In this regard, where material considerations are relevant (and must by statute be taken into account) Policy WIV29 and SS16s, or at least these parts of the policies, are not in accordance with the NPPF and have rendered themselves out of date. A
- 7.62 I have set out above that the wording of the policies contained in the Local Plan and Neighbourhood Plan relating to the site are highly prescriptive and, if read strictly, restrict the other factors being properly taken into account in the decision making process. I will now go on to demonstrate that material considerations are applicable in the consideration of this appeal. A detailed planning application will require consideration of additional technical information beyond that necessarily available and considered as part of the Neighbourhood Plan Evidence Base
- 7.63 As part of the appellant’s acquisition of the site in January 2022 and the pre-application process undertaken by the applicant between January 2020 and January 2021, a number of fundamental and significant constraints emerged which have informed the development potential of the wider site.
- 7.64 The constraints which emerged as the application progressed are illustrated on the Constraints Plan provided on **Figure 7.1** below. A summary of the site’s constraints include:
- 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 as required by HSE (**Core Document 8.1**).
 - The eastern boundary is populated by Category A and B trees and the root protection zones extend into the allocated residential area (**Appendix JF11**).

Proof of Evidence of James Firth

Land at Broadfields, Wivenhoe, Colchester

PINS Reference: APP/A1530/W/22/3305697



- A large proportion of the southern part of the site is dedicated to the national playing fields association (Fields in Trust) which prevents its development. Furthermore it cannot be developed by Taylor Wimpey as it is outside of their control.
- Along the western boundary, the developable area is reduced further by no build zones along the existing water easements of 5 metres (**Appendix JF14 and Appendix JF15**)..
- In addition the engineers have advised that an attenuation basin of 1,986m³ is required be provided in the south eastern corner, at the lowest part of the site for drainage, to address the technical drainage and flood requirements which arise with residential use.



Figure 7.1: Constraints Plan (Drawing no. TW027-AP-PL07 Rev A) (See Appendix JF9 for large scale drawing)

7.65 As a result of the above constraints the residential area allocated in Figure 35 of the WNP is severely constrained and only 2.98ha is in fact developable by the applicant, subject on onsite drainage requirements. This is a significant material consideration when assessing the proposal, and the minimum development

Proof of Evidence of James Firth

Land at Broadfields, Wivenhoe, Colchester

PINS Reference: APP/A1530/W/22/3305697



requirements stipulated in the allocation and the guidance related to density provided in the allocation's subtext.

- 7.66 As covered in the policy analysis above, I consider the proposed development complies with the other key requirements of the Neighbourhood Plan through the delivery of 2 ha of sports fields (albeit in a different location), affordable housing, and the delivery of shared-use footpath and cycle tracks through the site, and open space of a level exceeding that shown in the Neighbourhood Plan.
- 7.67 It would be helpful to note the approach considered in the appeal decision at the Land off Lowe Hill Road, Wem, Shropshire, WEM Appeal Decision (APP/L3245/W/20/3263642) (**Appendix JF6**). 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.
- 7.68 Similar 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.
- 7.69 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.**" (my emphasis)*
- 7.70 I believe it is important to note that the proposal central to Taylor Wimpey's appeal uses 3.74 ha of land for residential development whereas the allocation allows for a larger area of 4.06ha. The proposed residential is 0.32ha, smaller than the allocation allows for, equating to an 8% reduction. However, the available "residential" land south of the pylons is only 2.98 ha, so 1.08 ha is proposed to the north of the pylons. The land to the north equates to 26% of the area of site allocation's total residential area. It may be noted that this is a similar percentage than what the Inspector allowed at Wem.
- 7.71 I also refer to the assessment by Colchester planning officers in their Committee Report which 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.”

- 7.72 As I consider that, as in accordance with the decision in the WEM appeal set out above , the inclusion of an element of residential development to north of the pylons would not conflict with the development plan when taken as a whole. Furthermore in the case of Wivenhoe, whilst the land concerned is outside of the residential allocation, it was always intended to form part of associated uses (ie. playing fields) rather than remaining agricultural or as part of separate undeveloped countryside as was the case in WEM.

Landscape Impact

- 7.73 Landscape matters are dealt with by Ms Ross and I have considered her evidence in my assessment.
- 7.74 Given landscape forms part of the LPAs planning reasons for refusal I set out below any particular considerations relevant to landscape matters below.
- 7.75 In Para. 130 of the NPPF states that planning policies and decisions should ensure that developments:
- ‘are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);’* (paragraph. 130 (c)).
- 7.76 I read this policy to be positively worded and supportive of planning policy supporting developments which consider the potential landscape harm. I specifically refer to the paragraphs reference to ‘not preventing or discouraging appropriate innovation or change’. I consider that this positive tone is also struck by other extracts of the NPPF which I discuss further below.
- 7.77 As I outlined above, paragraph 7 of the NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development. I believe this should be given significant weight when this appeal is determined.
- 7.78 As I have mentioned, a reason for refusal of the application was the supposed demonstrable landscape harm to the area particularly when the site is viewed from Elmstead Road. The relevant part of the reason for refusal reads as follows:

Proof of Evidence of James Firth

Land at Broadfields, Wivenhoe, Colchester

PINS Reference: APP/A1530/W/22/3305697



“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.”

- 7.79 A key consideration in this appeal is the assessment of the difference of impact on landscape between the proposals providing residential units north of the area shown on Figure 35, and the both the existing situation and the proposed location of residential dwellings as set out in the Neighbourhood Plan allocation.
- 7.80 In respect of the existing situation I consider it important to note that public view points from Elmstead Road are currently limited, given there is no formal public access into the application site. Views from Elmstead Road from many viewpoints are obscured by existing trees and established vegetation.
- 7.81 A comparison with the impact of the area identified in the WNP is then also considered. I would note however that this scheme could not be achieved in a policy compliant manner as set out in relation to constraints above, and so any comparison must be considered on that basis.
- 7.82 Following comments received after submission, an amendment was made to the scheme proposals and the LVIA (**Core Document 1.18**) was updated accordingly which referenced the scheme changes and the updates to the National Planning Policy Framework (NPPF).
- 7.83 The addendum was prepared by ARC 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. These verified views included 2 views from Elmstead Road.
- 7.84 The selected verified viewpoint locations were subject to prior consultation with Colchester Borough Council. An initial response was received from Colchester’s landscape officer requesting consideration of an additional view from the junction of Elmstead Road and Brightlingsea Road however upon further review it was agreed that due to lack of visibility this would not be required. Further, as a result of considering the likely visibility during the photography site visit in February 2022, a number of the locations were adjusted to reflect locations where the development could have greater visibility.
- 7.85 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.
- 7.86 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 and land allocated in the WNP for residential uses will change the extent of houses visible, however ARC find this will only be a change experienced from very limited locations. The new view from the new path along Elmstead Road will see the

housing extend further east. However, this will be a limited and localised change for a very short stretch of path, representative of viewpoint 1 on the submitted verified views. Given there is no current formal public right of access in this area, there is currently a lack of view into the site in many positions. There is very limited views of the site from the remainder of Elmstead Road due there being no footpath, and due to mature trees and vegetation which line the road. It is not considered that the additional houses will result in any harm to the visual amenity and from that location.

7.87 Similarly, whilst from some locations housing to the north of the pylons will be visible from within the Cross Pit 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. There is also currently no formal public access to this land. Public viewpoints currently do not exist and whilst opening up the land will include some limited views of the built development, there will of course be other substantial benefits to the public in having formal public access to the area. This is considered further in the planning benefits section below.

7.88 The planning officer's previous 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."

Location of the Sports Pitches

7.89 As I noted earlier, the Sports Pitches are proposed at the northernmost portion of the site, which is a disposition with the Neighbourhood Plan allocation. The decision to locate the sports pitches is the result of unforeseen constraints related to the site which are set out in greater detail earlier in my Proof.

7.90 The LVIA also assessed the impact of the sports pitches from a number of viewpoints including Elmstead Road. The LVIA found that from this location the effect of the proposals is as follows:

The introduction of the open space, which will include large, naturalised areas of grassland, alongside an area of sports pitches; the introduction of larger growing tree species (oaks) along the historic hedge line and other tree planting will add visual interest and improve the visual amenity from this viewpoint.

Planning Benefits

7.91 The appeal proposal will deliver a range of sustainable planning benefits which would outweigh any harm and weighs heavily in favour of planning permission being granted. I set these out key planning benefits below. I then consider planning balance later.

Provision of Housing

- 7.92 At a national level, there is a significant need to substantially increase the provision of new homes. This requirement is supported across the political spectrum, and manifested in Government legislation and guidance.

Housing Requirements

- 7.93 The Section 1 Local Plan Policy SP4 sets out that CBC's annual housing requirement is 920 dwellings, and over the 20 year plan period a total of 18,400 (2013-2033).
- 7.94 Policy SG2 of the adopted Local Plan Section 2 states that CBC will plan, monitor and manage the delivery of at least 14,720 new homes in Colchester Borough between 2017 and 2033. This equates to a requirements of 920 homes a year over the plan period. This is clearly a minimum and should not be treated as a ceiling.

Housing Need

- 7.95 Housing need is the unconstrained number of homes needed in an area, which is constantly changing as a result of local, regional and national demographics and socio-economic factors.
- 7.96 To understand the extent of the housing need in the Borough using standard methodology and, based on March 2022 data, the annual average household projections for the next 10 years is 787 homes with a house price to earnings index of 10.38, which results in an uncapped annual housing need of 1,100 dwellings per year. (Source: Residential Research department at Savills using Department for Levelling Up, Housing and Communities, Ministry of Communities, Housing and Local Government, and Office for National Statistics data; **Appendix JF5**).
- 7.97 Therefore the Council's presently identified housing requirement results in a shortfall of 180 units per year when assessed against its uncapped annual housing need.

Housing Delivery Record

- 7.98 As agreed in the SOCG the Housing Delivery Test 2021 demonstrates that CBC currently can demonstrate 134% delivery against its housing requirements (measured over the preceding three years), as such the Council's 2022 Housing Land Supply Annual Position Statement (July 2022) (**Core Document 3.4**) claims that CBC can demonstrate 5.25 years housing land supply.
- 7.99 Table SG2 of the Local Plan Section 2 sets out that 297 homes were delivered in Wivenhoe between 2017 and 2021. The table also stipulates that 250 new homes are expected to be delivered from newly allocated sites between 2021 and 2033.

Proof of Evidence of James Firth

Land at Broadfields, Wivenhoe, Colchester

PINS Reference: APP/A1530/W/22/3305697



7.100 Colchester Borough Council's AMR records shows limited housing delivery within Wivenhoe. This shows the following:

- 20/21 – 3 units completed;
- 19/20 - 9 units completed;
- 18/19 – 17 units completed;
- 17/18- 9 units completed;
- 16/17 - 1 unit completed

7.101 The above totals 39 dwellings being delivered between 2016 and 2021, which is significantly less than 297 homes set out in Local Plan Section 2 as those said to have been delivered between 2017 and 2021.

Proposed New Homes

7.102 This appeal scheme for 120 units on an allocated site would deliver a significant percentage (13%) of CBC's annual target (0.8% of the plan target) and would make an important contribution to meeting the growing need for new housing in Wivenhoe and Colchester as a whole. The provision of a minimum 120 homes in this location is allocated in the Development Plan and the proposals therefore form part of the planned supply.

7.103 In terms of the market housing proposed the provision of 96 new market homes is a substantial offering when considered against past delivery in Wivenhoe.

7.104 In compliance with national, regional and local policy the appeal scheme will assist in meeting local housing needs as it will provide a wide choice of new homes (in terms of sizes, type, and tenure), widen opportunity for home ownership (private and shared ownership) and provide affordable rented homes in a sustainable location. Overall, the provision of 120 new homes will significantly boost the supply of housing in the Borough in accordance with prevailing Governmental aspirations.

Provision of Affordable Housing.

7.105 Affordable housing provision is a critical element of the planning system, given the national priority to address the housing crisis. Community needs for affordable housing is a long-standing and important material consideration contained in national planning policy, including the NPPF. Specially paragraphs 8, 63 and 65, as well as Chapter 5.

7.106 It has been reflected in a number of court cases including *Mitchell v Secretary of State for the Environment and Another, Court of Appeal (1994.)*; *ECC Construction Limited v Secretary for the Environment and Carrick*

Proof of Evidence of James Firth

Land at Broadfields, Wivenhoe, Colchester

PINS Reference: APP/A1530/W/22/3305697



District Council, Queens Bench Division (1994).; R v Tower of Hamlets London District Council, ex parte Barratt Homes Ltd, Queens Bench Division (2000).

Affordable Housing Need and Requirements

7.107 The SHMA (2015) (**Core Document 3.15**) sets out an affordable housing need of 278 dwellings per annum, comprising 266 affordable/social rented (96%) and 12 shared ownership (4%).

7.108 Policy WIV 29 requires 20% affordable housing on the site. The adopted Affordable Housing SPD(**Core Document 3.14**) seeking 80:20 affordable rent:shared ownership.

Affordable Delivery

7.109 DLUPH&C: Table 1011C Additional Affordable Housing Supply this shows that 824 affordable homes were completed between 2018/2019 -2020/2021 (Source: DLUPH&C: **Appendix JF7**). This table also sets out that over the past 15 year (between 2006/2007 and 2020/2021) CBC has delivered 2,999 affordable homes, equating to an average of 200 per year. Of which, 1,208 were social rent; 933 affordable rent; 255 intermediate rent; 169 shared ownership; and 434 affordable home ownership. This comprises 71% (2,141units) rented products and 29% (858 units) intermediate products.

7.110 This shows that historic delivery in CBC on average has not been meeting the annual affordable housing need, nor the needed tenure splits.

7.111 The appeal scheme provides 20% affordable housing, in line with the Neighbourhood Plan allocation, which equates to 24 affordable homes. The proposed development also includes a 79:21 tenure split in favour of Affordable Rent to aid local housing needs. This affordable housing provision will make a substantial contribution towards pressing affordable housing need and assisting current wait lists. In my opinion, the proposed tenure split is appropriate and will assist in meeting CBC's local housing needs and it addressed housing officer comments during the determination of the application.

7.112 I consider that the extent of the need for affordable housing is a significant material consideration in the determination of this appeal. The provision of 24 affordable homes will make a substantial contribution to the overall need for affordable housing in the Borough and will assist in creating a sustainable and mixed community in the local area. I consider that this should be afforded very substantial weight in the overall planning balance.

Economic Benefits

7.113 Paragraph 8(a) of the NPPF makes clear that the Government is committed to helping build a “*strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and*

Proof of Evidence of James Firth

Land at Broadfields, Wivenhoe, Colchester

PINS Reference: APP/A1530/W/22/3305697



coordinating the provision of infrastructure". The construction value of the project and the associated spend during the construction period represents a significant investment in the local area. In practical terms, it means:

- The creation of 272 direct jobs in construction;
- 137 indirect/induced jobs per year in the construction supply chain;
- £15.6m of Gross Value Added per year from direct and indirect construction jobs;
- First occupation expenditure of £660,000;
- Expect spend of £3.1m by new residents per year;
- 159,240 in council tax receipts per year; and
- £873,600 from New Homes Bonus payments over 6 years from central government to CBC.

7.114 A range of economic benefits have been demonstrated in **Appendix JF16** and should be afforded significant weight in the planning balance.

Social Benefits

7.115 The proposal will result in a number of further social benefits, including:

- In accordance with the site allocation the scheme will deliver a 2 hectares of sports pitches. Following discussions with the CBC, Taylor Wimpey will be providing the land only and CBC will be responsible for delivering the sports facilities. I consider that many other developments of a similar scale do not provide this level of on-site open space and sports pitches.
- The provision of new footpaths and cycle paths 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.
- The development will provide a range of high quality open spaces across the site totalling 9.28ha which is very substantial.
- Significant informal play space provision.

7.116 Overall, the appeal scheme would result in a range of further, positive social benefits which should be given significant weight in the planning balance given the importance placed on the social dimension of sustainable development in the NPPF. The provision of a very significant area of open space is a particular benefit that exceeds policy requirements and should be given very substantial weight in the planning balance.

Proof of Evidence of James Firth

Land at Broadfields, Wivenhoe, Colchester

PINS Reference: APP/A1530/W/22/3305697



Development in a Highly Sustainable Location

- 7.117 The appeal scheme is in a sustainable location. The development site is well located in terms of access on foot and by bicycle to public transport and local services.
- 7.118 National guidance on 20 minute neighbourhoods being a basis for good accessibility including by the TCPA and Sustrans, which on average equates to a 1.6km walk (1 mile).
- 7.119 The proximity to local services can be found in **Appendix JF8** and the transport services can be summarised as follows:
- The site is located within 500 metres of local services and facilities at the western end of Vine Drive. These services include a food store, chemist, takeaway, public house and a hairdresser.
 - The site is well connected to a comprehensive existing footway network serving all of Wivenhoe via footways on both sides of Richard Avenue, Mede Way and Vine Drive and then on to the centre of Wivenhoe via Colchester Road.
 - The site is well located in terms of sustainable transport, with local facilities and bus stops within walking and cycling distance. The site is located within 1.1 kilometres from Broomgrove Infant and Junior Schools via continuous footway network and signalised crossing on Colchester Road. This will reduce demand for car-based travel.
 - UoE Colchester Campus is located approximately 2.4 kilometres away and is accessible on foot or by bicycle via Colchester Road.
 - The railway station and town centre are all located 2.3 kilometres from the site, either via Colchester Road/High Street or via the network of roads on the east side of Wivenhoe. It is anticipated that commuting by rail would be an attractive option for residents of the site and future demand met by the commercial rail operator.
 - Pedestrian journey time to bus stops on Colchester Road is 600 metres from the site. Bus services to from Wivenhoe are good for this location in terms of frequency and destinations (including, Colchester City Centre, Great Horkesley, Manningtree, Highwoods, Wivenhoe centre).
- 7.120 Overall, the appeal scheme is in a sustainable location for new housing. It provides excellent accessibility to a range of services and facilities. Given this is in line with national and local policy however I do not give this particular additional weight in the planning balance.

Environmental Benefits

- 7.121 The appeal scheme incorporates a number of environmental benefits, including:

Proof of Evidence of James Firth

Land at Broadfields, Wivenhoe, Colchester

PINS Reference: APP/A1530/W/22/3305697



- Providing a well-designed development appropriate for this edge of settlement location.
- The proposed development area sits within arable land that has a limited existing ecological value, with the more sensitive boundary and LoWS scrub/grassland habitats set to be retained. The proposal offers a significant and positive opportunity to deliver benefits to biodiversity and achieve measurable biodiversity net gain (BNG). The scheme provides a Biodiversity Net Gain score of 35.88% units (as defined by Natural England on Metric 2.0 which was the latest guidance at the point of the application submission) in the biodiversity value of the site.
- An increase in tree canopy cover on the site;
- The impact of additional emissions associated with the development and on future residents on local air quality has been assessed and is considered not significant.

7.122 As outlined, the scheme will deliver a number of environmental benefits which cumulatively will ensure the environmental dimension of sustainable development is achieved. I am of the view that significant weight should be given to these benefits, and when combined with the social benefits of the open space provision, this in my judgement should be afforded very substantial weight in the planning balance

Summary of the Planning Benefits

7.123 The foregoing clearly demonstrates that the scheme would deliver several major planning benefits, all of which should be given between significant and very substantial weight in the planning balance. These are all significant material considerations which weigh in favour of the scheme.

7.124 In Section 9 of my proof I examine the impacts of the appeal scheme to establish if these outweigh the identified benefits.

8. Response to Third Parties

- 8.1 I acknowledge that third party comments were received from Wivenhoe Town Council, Sport England and 1 local resident.
- 8.2 These comments covered matters relating to the: conflict with the site allocation in the Local Plan and Neighbourhood Plan and location of the residential dwellings north of the pylons; site layouts; drainage matters; connectivity and sustainability; crime prevention; the location of ambulance bays for the new sport pitches.
- 8.3 I address the matters not previously addressed in my proof below where these raise material planning considerations.

Concern over Neighbourhood Plan Precedent

- 8.4 The Town Council sets out concern that the dispositions proposed will set a precedent for the other developments which fall within Neighbourhood Plan areas with an adopted Neighbourhood Plan. The Town Council doesn't acknowledge Section 38(6) of the TCPA that requires each planning application to be determined on its own individual merit, taking into account the development plan, as well as any other material considerations.

Town Council's Alternative Layout

- 8.5 Wivenhoe Town Council has set out two alternative layouts within their third party comments.
- 8.6 These do not consider the informed technical constraints which the appellant has identified (see **Appendix JF9**) nor has the Town Council advised that they have undertaken their own technical assessment prior to designing their options. In addition, I am not aware their layouts have not been tested via pre-application discussions with the LPA or statutory consultees.
- 8.7 JCN has provided comments on both their suggested layouts and these can be found at **Appendix JF10**.
- 8.8 I comment on both these layouts as follows:
- The Town Council proposed dwellings within the no build zones of the pylons which would not be accepted by HSE;
 - They proposed horizontal roads in the no build zones of the pylons which would not be accepted by HSE – roads can only cross pylon no-build zones at a 90 degree angle;
 - Private gardens are positioned over the maintenance strip around the existing drainage on the western edge which is not a deliverable proposition and unlikely to be accepted by Anglian Water;

Proof of Evidence of James Firth

Land at Broadfields, Wivenhoe, Colchester

PINS Reference: APP/A1530/W/22/3305697



- They propose the use of land outside of applicant ownership to provide SUDS and some rear gardens which is not a deliverable approach in order to deal with such matters;
 - Their layout requires both extensive removal of Category A trees to facilitate housing and development in the RPZ, which would be contrary to national policy and would also be most unlikely to be considered acceptable by the Council's Tree or ecology officers. Comments from the Appellant's arboriculturalist on this proposal can be found at **Appendix JF11**;
 - Compliance with ECC road widths and footpath widths is unclear;
 - It is not clear from the layouts if ECC's parking requirements can be met on site
 - ECC would unlikely consider the use of a crossroad junction at the site entrance as acceptable;
 - Compliance with EHDG back to back distances will not be achieved given the areas proposed, in turn compliance with EHDC garden sizes unlikely to be met;
 - Space for street trees not accounted for as per the NPPF;
 - Positioning of Category A trees (including RPZ and canopies) in private gardens present a risk of tree damage or total loss of trees, as TW wouldn't be in control of the maintenance or management of the trees, which also is most likely not acceptable to the Council's landscaping, tree or ecology officers;
- 8.9 I draw reference to Section 36(5) of the TCPA, which sets out "*If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document*".
- 8.10 In this instance the Section 2 is the most recently adopted development plan document. When reviewing their alternative layout, it is clear to me that it gives rise to a plethora of policy conflicts, including: sustainable settlements, habitat, ecology, wildlife, biodiversity, trees, countryside, environment, water management, parking, and highway safety.

Drainage Options

- 8.11 In terms of drainage the Town Council also suggest providing an attenuation basin in the LoWS or using underground storage tanks.
- 8.12 Using the LoWs for this purpose is inappropriate. It would result in the partial loss of designated wildlife habitat and disruption to sensitive ecology as a result of the heavy earth works required. It would require the removal of Category A trees to facilitate its delivery. An assessment of the ecology and biodiversity impact of this approach is not appropriately informed as no assessment has been undertaken by WTC to demonstrate that this is an appropriate solution.

Proof of Evidence of James Firth

Land at Broadfields, Wivenhoe, Colchester

PINS Reference: APP/A1530/W/22/3305697



- 8.13 SES, the appellant's ecology advisor has provided their views on this proposal, these can be found at **Appendix JF12**. This sets out that the boundary tree line is an important movement corridor for bats, the LoWs supported high density and diversity bird breeding, also well as providing habitat for grass snake and hedgehogs. Moving the attenuation pond would destroy some of the locally valued habitat, not just for its footprint, but for access, construction and maintenance. Such scheme proposed by the Town Councils would be in conflict with environmental policies and hierarchies set out in the Section 2 Local Plan.
- 8.14 The use of underground storage tanks would be inappropriate as it is much lower in SUDs hierarchy. The Lead Local Flood Authority (LLFA) have a hierarchy of preference when it comes to SuDS and attenuation crates are bottom of that hierarchy, with basins being at the top. This is reflected in Policy WIV26 which seeks wherever possible to do so, above ground drainage features. In addition, the proposed basin provides water quality treatment benefits, which accords with LLFA criteria, where the crates provide no benefit. Lastly, regarding tanks under individual plots, this is unlikely to provide any significant benefit from an attenuation perspective as this would require storage immediately upstream of the flow control. Comments from Stomor, the appellants drainage advisor, on these proposed approached can be found at **Appendix JF13**.
- 8.15 The sewer records (**Appendix JF14**) show the Broadfields area is drained by the public surface water sewer network which runs to the south east. The appeal scheme would be connecting to the same sewer, so would be discharging in a similar manner to the adjacent residential area. The Pre-development Enquiry response from AWS (**Appendix JF15**) confirms that they have no issues with a proposed connection to their foul or surface water sewers.

Need for 1 Bed Units

- 8.16 The Town Council comments that there are no 1 bed dwellings proposed and that there is a need for such dwellings. The 2015 SHMA (**Core Document 3.16**), sets out at Figure 7.3 a need for 28 market 1 bed units, 9 shared ownership 1 bed units and 81 affordable/social rented 1 bed units per year, equating to 12.8% of the annual housing need. The prescriptive requirements of WIV 29 do not require one bed units, and only require "*minimum of 45 dwellings shall be provided with one or two bedrooms*", with which the proposal accords.

Connectivity and Sustainability

- 8.17 The site is located in a highly sustainable location close to public transport, shops and services. As I have previously noted in my proof, the appeal scheme is sited in a sustainable location. The site provides very good accessibility to a range of services and facilities, as I demonstrate in my proof at and in my **Appendix JF8**.
- 8.18 Concerns were raised by the Town Council over the perceived lack of shared footpath and cycle track directly linking the development to the facilities at Broad Lane Sports Ground and its linkage with the public footpath 14 to the south of the site. The proposed footpath and cycle path from Elmstead Road facilitates future connection to the land to the south.

Proof of Evidence of James Firth

Land at Broadfields, Wivenhoe, Colchester

PINS Reference: APP/A1530/W/22/3305697



- 8.19 Two conditions are drafted which will secure the completion of the cycleway and footpath on the site, and the details of improvements to Footpath 14 Wivenhoe between the proposal site and Colchester Road. Taylor Wimpey has now agreed a Deed of Easement with the third party owner to legally be able to provide a foot and cycle path across the land to the south of the redline to facilitate this.
- 8.20 In terms of connections to Broad Lane Sports Ground, the foot or cycle route runs to the Elmstead Road on the northern site boundary. Onward access to the new sports pitches can be made via the proposed routes in the landscaping or via the road.

Designing out Crime

- 8.21 Some concerns were raised over the provision of cycle paths to the rear of properties. Essex Police were consulted on the proposals and provided the following comments:

'The proposed site plan does show the dwellings seem to be positioned well for good natural surveillance while protecting the vulnerable rear of the properties by having the gardens backing directly onto other gardens.'

- 8.22 Essex Police did not raise any significant concerns in relation to the proposed development. The cycle path is offset from the rear of the existing dwellings and it is well overlooked when passing through the proposed residential area.
- 8.23 The matter of the site's compliance with the Essex Police 'Designing Out Crime' document is not a disputed matter in this appeal.

Ambulance Bays for the New Sport Pitches

- 8.24 A concern was noted regarding the lack of provision for emergency vehicles to park adjacent to the new playing fields. This is not a stipulated requirement of the Neighbourhood Plan. The detailed specification of the 2ha of land for playing fields will be for CBC to deliver. They will be able to make such provision as they deem necessary as part of their proposal when designing the layout of the pitches.
- 8.25 Traffic and highway matters have been assessed by Council officers and the Highways Authority, and the impact with regards to the provision of parking and access for emergency vehicles is not a disputed matter.

Summary of Third Party Comments

- 8.26 I conclude that the comments raised by the third parties do not indicate factors which either individually or cumulatively outweigh the policy and material planning considerations which I have identified. Where any factors of relevance have been identified appropriately worded planning conditions have already been agreed within the SOCG.

9. Planning Balance

- 9.1 In determining a planning appeal a planning judgement has to be formed in accordance with statutory test, first considering the requirements of the statutory development plan, and then considering any other material considerations as section 38(6) of the Planning and Compulsory Purchase Act 2004 provides.
- 9.2 It is not the case that if an application is contrary either a single policy or a policy criterion within the development plan that it ought to be refused solely on that basis. The Courts have recognised that policies within a development plan can pull in different directions and may even be inconsistent. Instead, the decision-taker must weigh up all of the benefits and harm resulting from a proposal, with reference to all the relevant policies of the development plan and other material considerations, and then come to a balanced view on whether planning permission should be granted or refused.
- 9.3 In assessing these factors it is necessary to consider the weight to be attributed to those issues weighing in favour or against the grant the proposals. I have set out by assessment of the key considerations for planning balance below. As was assessed by officers (and with which I agree) the development proposed accords with the development plan read as a whole. That means, in accordance with paragraph 11c of the NPPF, that planning permission should be approved without delay. If a different view is taken upon the issue of the conformity of the proposal with the development plan (read as a whole) then it is accepted that this should be carried out on a 'flat balance' basis given the provisions of paragraph 11d (titled balance) are not engaged. Notwithstanding this it is clear that not only do the proposals accord with the development plan as a whole, but that the benefits of the proposal weighing in favour of grant of planning permission demonstrably exceed any negatives or limited conflicts with elements of the development plan.
- 9.4 In considering planning balance I set out any benefits and also adverse impacts along with the weight to be attributed. This includes consideration if that weight is significant, substantial or very substantial.

Benefits

- Delivery 120 new homes which will contribute towards CBC's housing targets, specifically Wivenhoe's need in line with the minimum requirements set out in WIV29 –**Very Substantial** weight in the planning balance due to the unmet housing need;
- Provision of 20% affordable housing in accordance with the site allocation, making a substantial contribution towards pressing housing need and assisting current wait lists – **Very Substantial** weight in the planning balance due to unmet affordable needs;
- Social and environmental benefits associated with a very substantial quantum of new publically accessible high quality realm and landscaping will be provided, including formalised public access to the LoWS and very generous tree planting and soft landscaping– **Very Substantial** weight in the planning balance;

- The scheme will result in considerable Economic Benefits – **Significant** weight in the planning balance.
- Achieving a Biodiversity Net Gain score of 35.88% (above the emerging requirements). – **Significant** weight in the planning balance

Adverse Impacts

- Limited conflict with parts of the Development Plan, but consistent with the plan when considered as a whole – **Most Limited** weight in the planning balance

9.5 Where other issues have been taken into account but I have not considered to weigh positively or negatively on the planning balance I have not listed above.

9.6 The evidence from Ms Ross sets out that that the difference in any effects to be very limited. In particular, in respect of Elmstead Road, her opinion is that it is not a sensitive receptor and “neither the landscape or the views towards it from Elmstead Road, will be harmed by the Appeal Scheme, as alleged within the reason for refusal”. My reading of her assessment, is that the impacts arising from the development should be attributed the most limited adverse weight in the planning balance.

9.7 I have assessed the potential impacts of the proposals as set out in the reasons for refusal. I have had regard to the supporting evidence from the Appellant’s witnesses in undertaking this assessment.

9.8 Overall, the potential impacts of the appeal scheme have been assessed and I have concluded that the identified technical policy harm is very limited. The planning balance in my opinion is strongly in favour of this viable and deliverable proposal being granted planning permission.

10. Section 106 Contributions, CIL and Conditions

- 10.1 The Appellant intends to enter into a section 106 Agreement with LBC in respect of the obligations required to support of the delivery of the scheme. Details of the Heads of Terms are set out in the SOCG.
- 10.2 Whilst the agreed contributions provide mitigation for the development, the playing fields in particular will be accessible by both residents and the wider community, which will be a public benefit.
- 10.3 In addition to the above, the Appellant will make the statutory Community Infrastructure Levy (CIL) payments, in line with the CIL Regulations 2010. CIL Form 1 was submitted as part of the planning application.

11. Conclusion and Summary

- 11.1 My evidence addresses the question of whether the appeal proposals are acceptable in principle when assessed against relevant policies at a local and national level and when taking account of national policy and guidance.
- 11.2 I have set out the planning case in support of the appeal proposals and have considered the extent to which they are supported by the NPPF as a whole as well as by a number of its key policies and requirements, including the need to significantly boost the supply of housing supply across the country.
- 11.3 In my proof I have discussed and examined CBC's reasons for refusal. A summary of which is provided below for reference.
 - Non-compliance with the site allocation in the adopted CBC Local Plan and Wivenhoe Neighbourhood Plan insofar as the proposals depart from the site allocation and provide residential development outside of the settlement boundary; and
 - Lack of section 106 agreement to mitigate certain impacts of the development.
- 11.4 My assessment demonstrates that the proposals are in conformity with the development plan when assessed as a whole.
- 11.5 Any areas of non compliance with the Development Plan are limited, and in those respect the relevant policies are out of date, and fail to take into account the material consideration around technical planning constraints that have been established at detailed design stage.
- 11.6 In my professional judgment, material considerations exist, alongside a multitude of other planning and public benefits of the appeal scheme, which weigh heavily in favour of grant of planning permission.
- 11.7 I have concluded that the potential harm identified is limited and does not outweigh the benefits in favour of the scheme. Accordingly, I conclude that the appeal scheme constitutes sustainable development and that the planning balance is strongly in favour of the proposals being granted planning permission.
- 11.8 The appeal will be supported by a completed section 106 agreement, securing the necessary planning obligations and contributions as requested by stakeholders and consultees.
- 11.9 On the basis of the above and as set out in this Proof and other supporting evidence submitted in support of this appeal, my firm view is that appeal proposals should be granted planning permission.

12. Declaration

12.1 I declare that the evidence set out in this proof for the appeal is true and follows accepted good practice. The opinions expressed are my own and are formed from professional judgements based on my experience.

A handwritten signature in black ink, appearing to read "J Firth".

James Firth
Director, Savills (UK) Ltd