

HUTCHINSONS

Appeal by Taylor Wimpey UK Limited

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

REBUTTAL PROOF OF EVIDENCE OF

ALISON HUTCHINSON

MRTPI

**ON BEHALF OF
COLCHESTER CITY COUNCIL**

**LPA Ref: 210965
PINs Ref: APP/A1530/W/22/3305697**

November 2022

HUTCHINSONS
15 Castle Gardens, Kimbolton, Cambridgeshire. PE28 0JE

1 REBUTTAL PROOF OF EVIDENCE

1.1 I have read the Proofs of Evidence of the Appellant and have prepared this rebuttal Proof of Evidence in response to the evidence provided by James Firth in his Proof of Evidence. My rebuttal relates to the following matters in Mr Firth's evidence:

- a) Most Important Policies
- b) Compliance of Development Plan with NPPF
- c) Lack of Conformity with Policy WIV29
- d) Planning Benefits

a) Most Important Policies

1.2 At paragraph 7.32 of James Firth's proof of evidence, he sets out what he considers to be the most important policies in relation to this appeal, namely Policy SP3 Spatial Strategy for North Essex, SS16 Wivenhoe, ENV1 Environment and WIV 29 Land Behind Broadfields. I agree that these are some of the most important policies but consider that the other policies referred to in the decision notice are also most important policies in the context of paragraph 11d). Therefore, I include Policy SP1 and SG2 as most important policies, Policy SP1 because it provides the policy presumption in favour of sustainable development and confirms that development that complies with the Plan will be approved without delay unless material considerations indicate otherwise and Policy SG2 which sets the overall appropriate level of new housing provision for Wivenhoe and refers to Policy SS16.

1.3 The parties are in the process of finalising a Section 106 and by the time the inquiry starts, it is likely there will be a completed S106. However, if that is not the case, then I consider that Policies SP2 and SP6 would also need to be included as most important policies as they are fundamental to ensuring that, whatever development takes place, it provides appropriate mitigation on infrastructure and for protected sites.

- 1.4 Mr Firth considers that Policy WIV29 is the single most important policy to the determination of the appeal proposals (paragraph 7.41). Policy WIV29 sets out the specific design requirements for the development of the site and I agree that it is important in that respect but I do not consider that it represents a single most important policy or that NPPF11d) requires policies to be ranked in order of importance.
- 1.5 I agree with Mr Firth's comment at his paragraph 7.7 that the most important policies (I assume he means the ones at his paragraph 7.32) are not out -of – date. I also consider that neither SP1 nor SG2 (as well as SP2 and SP6) are out of date.
- 1.6 At paragraph 7.58 Mr Firth suggests that the factors he describes in his preceding paragraphs in relation to the restricted site for the Appellant (because of '*additional technical information on constraints*'), 'might¹ 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'. He refers to the Peel Investments judgement (contained at his Appendix JF2) to support his suggestion.
- 1.7 I do not consider that the 'events' suggested by Mr Firth are such as to make Policy WIV29 out of date. Although these factors may have been discovered by the Appellant after the adoption of the Neighbourhood Plan, all the constraints to which he refers were in place throughout the preparation, examination and adoption of the Neighbourhood Plan. They are physical factors on the ground that would have been capable of being known during that time. Similarly, the ownership of the site by the Borough Council would have been known by the promoter of the site but in any case, having an allocated site in single ownership is not a prerequisite for allocating sites. Furthermore, the Deed of Dedication does not preclude development. I therefore find nothing in Mr Firth's evidence that demonstrates that Policy WIV29 has either been overtaken by events, is inconsistent with the NPPF and/or can be considered to be out of date.

b) Compliance of Development Plan with NPPF

- 1.8 In my proof of evidence I commented that the Appellant had indicated that

¹ My underlining

they did not consider that the Development Plan is consistent with the NPPF (my paragraph 4.11). Mr Firth's proof clarifies this issue at his paragraph 7.6 where he alleges that his contention relates to two policies – SS16 and WIV 29. I have already dealt with WIV 29 above. In respect of Policy SS16, I have seen nothing in Mr Firth's evidence that demonstrates that Policy S16 does not comply with the NPPF. His contention appears to be based on the fact that the policy does not refer to material considerations but I fail to understand how this means that this policy is in conflict with the Framework. There is a statutory requirement (S38(6)) for decisions to be in conformity with the Development Plan unless material considerations dictate otherwise. Policy SP1 contains that same requirement and applies to the Local Plan (Sections 1 & 2) and I do not consider it is necessary for each and every policy (including Policy SS16) to include these words as well.

c) Lack of Conformity with Policy WIV29

1.9 At paragraphs 7.42 to 7.59 Mr Firth sets out how he considers that the Appeal proposal accords with Policy WIV29. His analysis relates primarily to how he considers the development complies with criteria (i) to (xi) of WIV29. He identifies some conflict with parts (vii), (viii), (ix) and (x) at paragraph 7.46 and acknowledges at Paragraph 7.47 that the areas of conflict include the first part of the policy where Figure 35 is referenced. He accepts that the application proposals include residential development on a larger area of land than the allocated 4.06ha but then argues that *'the provision of homes in this area does not expressly conflict with this part of the policy given that it does not state that this area will be otherwise protected.'*

1.10 I consider that this argument is somewhat disingenuous and underplays the conflict with Policy WIV29. The Policy specifically states that

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

The policy clearly and expressly provides that the residential development comprises a minimum of 120 dwellings and that it is this that is to take place on the 4.06 ha identified in Figure 35 and within the defined settlement boundary. It is the development of the 4.06ha allocated site that is subject to the eleven criteria contained in the policy including the provision of the playing

fields (vii), not just 120 dwellings as appears to be suggested by Mr Firth. There is no need for this policy to also 'protect' the areas in Figure 35 as, from a simple reading of the policy, it is very clear and specific as to where the housing and the playing fields (and therefore the public open space) are to be located due to its reference to Figure 35. The policy is clearly written and unambiguous so that it is evident how a decision maker should respond to development proposals (NPPF para 16d)). The policy provides no scope for an applicant to choose an alternative or additional location for the housing beyond the allocated site and settlement boundary – settled upon via the development plan process - and it is not sufficient to argue that because they may meet the criteria contained in WIV29 the development is then made acceptable. In this case however, I note that Mr Firth accepts that the development does not meet all the criteria either.

d) Planning Benefits

- 1.11 I reviewed the benefits put forward by the Appellant in their statement of case at my Table 1 (page 37) of my Proof of Evidence. Mr Firth has expanded upon those and clarified what he regards as the planning benefits of the appeal proposal at Paragraphs 7.91 to 7.124 of his proof. He argues that the appeal proposal will deliver a range of sustainable planning benefits which would outweigh any harm and that weigh heavily in favour of planning permission being granted. For the most part they are same benefits that were advanced in the Statement of Case but I note that some of the previous 'benefits' are no longer being claimed as such. I therefore examine the benefits put forward by Mr Firth below.
- 1.12 Market Housing: At paragraph 7.97 of his evidence and contrary to the agreement in the Statement of Common Ground, Mr Firth now appears to seek to suggest that the Council has a shortfall in its housing requirement of 180 units per year. He has based this assertion on an uncapped annual housing need calculated using the Standard Methodology. I consider that an argument on this basis is irrelevant. Colchester Borough Council, together with its partner North Essex authorities, has an Objectively Assessed Housing Need (OAHN) set in the very recent adopted Section 1 Local Plan in accordance with Paragraph 220 of the NPPF. That OAHN was subject to extensive scrutiny by the Inspector at the Examination into the Local Plan

who concluded that '*For the foregoing reasons, therefore, I conclude that the housing requirement figures set out in Plan policy SP3 are soundly based.*' (Paragraph 58 of Inspector's Report²)

- 1.13 The Council has therefore based its 5 year housing land supply on the OAHN in the adopted Local Plan in accordance with paragraph 74 of the NPPF. It is fully accepted that the Standard Methodology is likely to result in a higher figure than a locally assessed need as it is designed to meet a national target. However (and in any case), the Council's housing delivery over the last four years as recorded by the Housing Delivery Test has been consistently higher than its housing requirement as shown in the table below:

Date HDT published	Number of Homes required	Number of Homes delivered	Housing Delivery Test measurement
2019	2583	3109	120%
2020	2770	3392	122%
2021	2894	3265	113%
2022	2375	3173	134%

- 1.14 The agreed position between the parties is that there is a 5.25 year supply of housing land. I agree that the provision of housing is a benefit but have given it moderate weight because the Council has a positive housing supply position overall.
- 1.15 At paragraph 7.101 Mr Firth comments on an apparent discrepancy on the delivery of dwellings in Wivenhoe between 2017 and 2021 contained in the Policy SG3 table. The Policy SG3 table is correct in that it includes the 257 unit development at Boundary Road (Meadows Phase II). This appears to have been omitted from the Annual Monitoring Report for 2018/19.
- 1.16 He also comments that the provision of 96 new market homes is a substantial offering when considered against past delivery. I fully accept that 96 homes is

² Report to Braintree District Council, Colchester Borough Council and Tendring District Council dated 10 December 2020

a substantial offering but do not consider that it is solely dependent on the current appeal scheme. That number of houses is a requirement of Policy WIV29 and therefore would also be required to be provided by a scheme solely on the allocation site which would also make a more efficient use of land in accordance with NPPF Paragraph 124.

1.17 I would also comment that the Development Plan identifies a total of 250 dwellings on four allocated sites in Wivenhoe which are to be delivered over the plan period (2017-2033). The current appeal contains the largest of those allocations at 120 dwellings but the Council is also currently considering planning applications for two others which represent a further 100 dwellings and a care home. (See paragraphs 3.2 to 3.5 of Statement of Common Ground). It appears that most of the larger allocations in Wivenhoe will come forward in the earlier part of the Plan period and therefore, it is not so pressing that the appeal scheme should be granted, especially when it does not provide the range of housing that the WNP identifies is needed.

1.18 Affordable Housing: I agree that the provision of affordable housing on the site is an important benefit to which I have attached significant weight. The Appellant is providing the 20% affordable housing as required by Policy WIV29 (iv) but again that would also be a requirement of any policy compliant scheme and is not a sole benefit of the current appeal proposal.

1.19 At paragraph 7.107 Mr Firth highlights the affordable housing need identified in the SHMA (CD 3.15). The SHMA provided some of the background evidence to the affordable housing requirement of the Local Plan and supported a target of 30-35% affordable housing in new developments. Viability evidence indicated this should be reduced to 30% and Section 2 Local Plan Policy DM8 -Affordable Housing – therefore requires a 30% affordable housing provision in the rest of the borough. Although I attach substantial weight to the provision of 20% affordable housing in this appeal and accept that this figure is in accordance with the WNP, I consider that a scheme that provides a greater number of affordable housing would perhaps be given greater weight than one that was simply policy compliant.

1.20 Economic Benefits: Mr Firth sets out his calculations for the economic benefits of the scheme and I take no issue with those. Those are directly related to the number of houses to be built and therefore would apply to any scheme for 120

dwellings on the appeal site or the allocated site. I attach moderate weight to those benefits and would do so for a policy compliant scheme.

- 1.21 Social Benefits: the social benefits that Mr Firth relies on at his paragraph 7.115 are derived mostly from complying with the requirements of Policy WIV29 and bringing forward the open space shown on Figure 35. Again, I give weight to these as they will result in the provision of sports facilities and open space but I do not consider that the current appeal scheme provides any significantly greater provision of open space and therefore benefits than a policy compliant scheme. I accept however, that the current scheme intends to provide a formal access to the part of the LoWs within the appeal site. I agree that is a benefit of this scheme but that consider it has to be countered against the impact of increased use of the LoWs. Nevertheless, I recognise that it represents the a benefit, and the only benefit, of this scheme compared to a policy compliant scheme.
- 1.22 Development in a Highly Sustainable Location: I note that Mr Firth now agrees with me that this is a national and local policy requirement and not a matter which should be regarded as a planning benefit to which weight should be attached.
- 1.23 Environmental Benefits: Mr Firth lists four 'benefits' at his paragraph 7.121 but I fail to see how these can all be regarded as planning benefits to which significant weight should be given. They comprise for the most part, matters which should be provided with any development on this site and location. Good design (paragraph 7.121 first bullet point) should be an expectation not a benefit as should ecological enhancement (second and third Bullet point) and amenity (fourth bullet point). I accept that the level of ecological enhancement in this instance is a benefit to which weight can be given but consider that a similar benefit would be capable of being provided with a policy compliant scheme. The assessment of impact of additional emissions not being significant is also not a benefit of this scheme but must be an expectation which existing and future residents have a right to expect.
- 1.24 I have therefore provided a revised and shorter Table 2 below summarising the benefits of this scheme as now advanced by Mr Firth, whether it is specific only to the appeal scheme and what weight I attach. This reduces the number of individual 'benefits' that were advanced previously in the

Appellant's Statement of Case and groups them under the categories I have commented upon above and list in the table below. For ease of reference, I have also included the weight that Mr Firth attaches to the respective benefit.

TABLE 2: APPELLANT'S PLANNING BENEFITS

Appellant's Benefits	Planning Benefit	Specific to Appeal proposal	Planning Benefit of Policy Compliant Scheme	Appellant Weight	LPA Weight
Provision of Market Housing	Yes	No	Yes	Significant	Moderate.
20% Affordable Housing (with policy compliant tenure split)	Yes	No	Yes	Significant	Significant
Economic Benefits	Yes	No	Yes	Significant	Moderate
Social Benefits,	Yes	No	Yes	Significant	Moderate
Sustainable Location	No	No	No	None	None
Environmental benefits	Yes	No	Yes	Significant	Moderate

1.25 I concluded in my Proof of Evidence that the 'benefits' advanced by the Appellant did not constitute key benefits that are particular to the appeal scheme. I am of the same mind in respect of the benefits put forward by Mr Firth. The benefits that I acknowledge – market housing, affordable housing, economic, social and environmental - are benefits that will come forward whichever scheme comes forward. They would mostly be realised if a policy compliant scheme came forward. The only benefit that I acknowledge may be specific to the appeal scheme is the formalised access to the LoWs. However, I temper the weight to be given to this benefit because of potential impact on the Wildlife site by unrestricted public access. I also consider that, as the Appellant owns the site as well as the rest of the appeal scheme, there is no reason to suppose that even with a policy compliant development, public

access to the LoWs will not come forward.

Conclusion

- 1.26 In conclusion, I remain of the opinion that the appeal proposal is contrary to the policies that Mr Firth and myself agree are the most important policies for determining this appeal and I also include Policies SP1 and SG2. Those policies are not out of date and they are concerned with the overall strategy of the recent development plan for housing development. The appeal proposal conflicts with that strategy and I conclude that the proposal therefore does not accord with the development plan as a whole. I have seen nothing in Mr Firth's evidence that indicates to me that there are any material considerations, including any planning benefits, that weigh in favour of the appeal such that the Development Plan should be set aside. I reach this conclusion regardless of the landscape harm that also arises. However, when I add in the additional adverse landscape character and visual impacts as set out in Anne Westover's evidence, I remain of the view that the development is unacceptable and request that the appeal is dismissed.