

**Proof of Evidence of James Firth – Appendices**

Land at Broadfields, Wivenhoe, Colchester

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

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# Summary Proof of Evidence of James Firth

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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: 13<sup>th</sup> December 2022

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## 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.

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- Along the western boundary, the developable area is reduced further by no build zones along the existing water easements of 5 metres.
- In addition the engineers have advised that an attenuation basin of 1,986m<sup>3</sup> 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.

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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.

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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:

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*“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.

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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.