

HUTCHINSONS

Appeal by Taylor Wimpey UK Limited

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

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

CONTENTS

1 STATEMENT OF EXPERIENCE 2

2 INTRODUCTION AND BACKGROUND..... 3

3 THE DEVELOPMENT PLAN..... 7

4 MATERIAL CONSIDERATIONS 19

 a) Implications of the NPPF.....19

 b) Restrictions of the Allocation Site.....25

 c) Impact upon Local Infrastructure.....34

 d) Other matters.....35

5 THE PLANNING BALANCE 37

6 CONCLUSIONS AND SUMMARY PROOF OF EVIDENCE..... 41

APPENDICES

1. Appeal Decision dated 13 April 2022: APP/A1530/W/21/3285769 –
102 East Road, West Mersea, Colchester
2. Deed of Dedication with FIT dated February 2013
3. Land Registry entry 8 October 2020

1 STATEMENT OF EXPERIENCE

- 1.1 My name is Alison Hutchinson. I have a degree in Town and Country Planning and I am a Member of the Royal Town Planning Institute. I am a Partner in Hutchinsons, a planning practice that operates from Kimbolton in Cambridgeshire. I have over 35 years' experience of town and country planning.
- 1.2 Hutchinsons was set up in 1991 and advises clients in both private and public sectors on a wide variety of planning issues. I have acted, and continue to act, on behalf of a number of private clients, Local Planning Authorities and Parish Councils on planning matters including providing advice on planning applications and enforcement matters and acting as their expert witness at appeals. I acted on behalf of Welwyn Hatfield Council in the 'Welwyn case', which was decided in the Supreme Court.
- 1.3 Before joining Hutchinsons in 1996 I was Associate Partner in The Development Planning Partnership (DPP), acting on behalf of such clients as Tesco Stores Ltd and the former Commission for the New Towns as well as District Councils.
- 1.4 I have experience in dealing with a wide range of Development Management issues throughout the country. I started my career working in Local Government for eight years where I gained extensive experience in development control with responsibility for dealing with all types of planning applications including housing.
- 1.5 I have acted on behalf of District Councils for many years and have acted as their expert planning witness at a large number of their appeals. I have also been retained to help process major applications at Uttlesford, North Norfolk, Braintree and Tendring District Councils as well as act as planning witness.
- 1.6 I have been instructed by Colchester City Council to present the planning evidence in relation to this appeal. I have visited the site and surrounding area on more than one occasion and am familiar with the issues involved.
- 1.7 The evidence which I have prepared and provide for this appeal reference APP/A1530/W/22/3305697 (in this proof of evidence) is true and has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.

2 INTRODUCTION AND BACKGROUND

2.1 The application the subject of this appeal was submitted in March 2021 and sought full planning permission for the construction of residential development, access, landscaping, public open space, and associated infrastructure works on land at Broadfields, Wivenhoe, Colchester

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

2.3 The application was subject to extensive consultations which raised a number of concerns. Objections were received from Wivenhoe Parish Council and third parties. No objections were received from technical consultees. The consultation responses are summarised in the Officer's Report to Committee (CD1.2) and copies of the consultation responses have been enclosed with the Council's questionnaire response for this appeal and are available on the Council's website.

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

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

- 2.5 The decision notice was issued on the 14 June 2022 (CD1.1).
- 2.6 The appeal was lodged on the 13 August 2022 and the Inquiry is scheduled for 4 days commencing on Tuesday 13th December 2022.
- 2.7 The Parties have agreed and submitted a Planning Statement of Common Ground and have also agreed a Landscape Statement of Common Ground.
- 2.8 The Council and the Appellant are also in discussion in relation to a draft s.106 Agreement which will be subject to the details of any planning approval. Such an agreement is agreed to be necessary. The requirements of the s.106 Heads of Terms are generally agreed between the parties and it is anticipated that the Agreement will be signed before the start of the inquiry. In those circumstances, I confirm that the Council will not be defending Reason for Refusal No 2. However, if the Agreement is not signed or agreed, then the Council reserves the right to address the outstanding matters and explain its objections to the proposal.
- 2.9 The Inspector has issued his Case Management Conference Note in which he identifies the main issues of this case to be:

- a. The principle of the development with respect to relevant planning policy, and
- b. Landscape Impact.

2.10 At the Case Management Conference, the Appellant queried the Council's comments in its Statement of Case which touched on design. An email has been sent to the Appellant clarifying the position and confirming that the Council does not take issue with the detailed design of the housing estate or its layout. The Council's comments on design in the Statement of Case are narrow points relating to how the appeal proposal connects to, and affects, the surrounding landscape and are concerned primarily with where the proposed pedestrian and cycle routes cross through the existing boundaries and how they will affect the visual impact of the development, particularly in the wider context. Anne Westover explains these points in her evidence.

2.11 I address the Inspector's issue a) in my evidence and also the policy implications of issue b). In preparing my evidence I draw upon that of Ms Westover who is giving evidence on Landscape matters. I conclude my evidence with a consideration of the benefits of the proposal and the planning balance.

3 THE DEVELOPMENT PLAN

3.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. It follows therefore that where proposals are contrary to policies of the Development Plan, then development should be refused unless there are material considerations that indicate otherwise.

3.2 I therefore propose to assess the proposals against the relevant policies of the development plan but before doing so I briefly outline the policy context and background which is relevant to the consideration of the appeal proposal.

The Colchester Development Plan

3.3 Since the refusal of planning permission in June 2022, Colchester Borough Council has adopted its Section 2 Local Plan. The Local Plan Colchester Borough Local Plan 2017 – 2033, Section 2 (CD2.2) was adopted on 4 July 2022, and together with the previously adopted Section 1 Local Plan (CD2.1), has superseded the following documents which are referred to in the reasons for refusal:

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

3.4 The **Colchester Development Plan** for the area, including the appeal site, now comprises:

- Colchester Borough Council Local Plan 2013 – 2033 Section 1 – North Essex Authorities' Shared Strategic Section 1 Plan (adopted February 2021), - the Section 1 Plan
- Colchester Borough Local Plan 2017 – 2033, Section 2 (adopted July 2022), - the Section 2 Plan
- Wivenhoe Neighbourhood Plan (Made 2019) - WNP.

Reasons for Refusal

3.5 The reasons for refusal allege that the proposal is contrary to the following

policies of the Development Plan:

- Section 1 Local Plan Policies SP1, SP2, SP3, and SP6,
- Section 2 Local Plan Policies SG2 and SS16 and
- Wivenhoe Neighbourhood Plan Policy WIV29.

Policies SP2 and SP6 relate to Reason for Refusal No 2.

3.6 The Council's Statement of Case drew attention to the fact that whilst Reason for Refusal No 1 alleges that the development is contrary to the now superseded Core Strategy ENV1, the refusal notice does not refer to the replacement Policy ENV1 in the then emerging Local Plan Section 2. Policy ENV1 has now replaced Core Strategy ENV1 and is very similar in its content. Therefore, whilst I accept that the new policy is not specifically referred to in the reasons for refusal, I consider that it is relevant and will therefore refer to its contents rather than the superseded policy.

3.7 I propose to consider how the development conflicts with those policies below.

Principle of Development

3.8 There is no issue between the parties that the principle of development of the site allocated for housing within the Development Plan and within the recently identified settlement boundary of Wivenhoe is acceptable. The site is specifically identified for housing in the Section 2 Local Plan and the Wivenhoe Neighbourhood Plan and the principle of development is therefore consistent with the strategic policies Policy SP1 and SG3 and also with the site specific Policies SS16 and WIV29.

3.9 The issue for the Council at this inquiry is that the proposals locate 35 of the 120 dwellings outside the allocated site and beyond the settlement boundary into an area allocated for open space/sports fields where both the Colchester Local Plan Section 2 and the Wivenhoe Neighbourhood Plan state that development will not be supported unless a policy in either document specifically allows for it.

3.10 Policy SP3 (Spatial Strategy for North Essex) places the requirement on the Borough Council to formulate the appropriate spatial strategy for its area and to identify where new development will be accommodated according to the role of the settlement, sustainability, its physical capacity and local needs. The

Borough Council has done that in the recently adopted Section 2 Local Plan and has categorised Wivenhoe as a Sustainable Settlement under Policy SG1.

3.11 The spatial hierarchy contained in Policy SG1 essentially comprises four tiers with the urban area of Colchester forming the first tier and the Sustainable Settlements (and Garden Community) forming the second tier. Thereafter Other Villages form the third tier with the last (fourth) tier being Countryside. The Policy states that:

In the remaining Other Villages and Countryside of Colchester, new development will only be acceptable where it accords with policies OV1 and OV2. New development in the open countryside will be required to respect the character and appearance of landscapes and the built environment and preserve or enhance the historic environment and biodiversity to safeguard the rural character of the Borough

3.12 The disposition of housing development falls to Policy SG2 (Housing Delivery) which contains the allocation of 250 dwellings for Wivenhoe, the detailed distribution of which is subject to Policy SS16.

3.13 Policy SS16 relates specifically to Wivenhoe and confirms that all development proposals in the 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.

3.14 Policy SS16 also confirms that the WNP identifies the appropriate settlement boundary for Wivenhoe, that it identifies specific sites for housing allocations needed to deliver the 250 dwellings together with the policies needed to support the housing delivery through housing mix, type of housing and density for each site allocated for housing and the infrastructure requirements to support new development.

3.15 In addition, Policy SS16 states that proposals for development outside of the settlement boundary will not be supported unless the Neighbourhood Plan or other Local Plan policy specifically allows for it.

3.16 The Proposals Map for the Section 2 Local Plan identifies the settlement boundaries for the settlement and the sites allocated for development by the Local Plan. In the case of Wivenhoe, the Section 2 Local Plan Proposals Map –

Wivenhoe SS16 (CD2.3) reflects the same allocations and settlement boundary for the town as shown in the Neighbourhood Plan. The settlement boundary is shown extending around the north, east and south boundaries of the housing allocation at the rear of Broadfields. The designated Public Open Space located directly to the north of the housing allocation is excluded from the settlement boundary but includes all the land to the north of Broadfields currently within the appeal site and also includes the Broad Lane Sports Ground off Elmstead Road, occupied by the Wivenhoe Football Club. The Public Open Space designation also extends to the south of the appeal site and covers a large area of the Wivenhoe Cross Local Wildlife Site.

3.17 The Wivenhoe Neighbourhood Plan (WNP), made in 2019, contains the details of the allocations including that of the appeal site. WNP Policy WIV29 allocates a total of 4.06 hectares of land behind Broadfields for a minimum of 120 dwellings. The allocations are shown on Figure 35 of the WNP.

3.18 The extension of housing development beyond the recently defined settlement boundaries as proposed by this appeal does not comply with Policy SS16 which specifically states that such proposals will not be supported unless the Neighbourhood Plan or other Local Plan policy specifically allows for it. Neither the Local Plan nor the Neighbourhood Plan does so and in this case, there are specific policies which seek to prevent it.

3.19 The proposed northern residential development is defined on the proposals map as Public Open Space and therefore Section 2 Policy DM17 (Retention of Open Space and Recreation Facilities) is relevant (see CD 2.2). This policy seeks to resist the loss of public and private open space and states under Paragraph A that development, including change of use, of any existing or proposed public or private open space, including allotments, will not be supported unless it can be demonstrated that:

- (i) Alternative and improved provision will be created in a location well related to the functional requirements of the relocated use and its existing and future users; and,
- (ii) The proposal would not result in the loss of an area important for its amenity or contribution to the green infrastructure network or to the character of the area in general; and
- (iii) It achieves the aims of any relevant prevailing strategy relating to open

space and recreation.

- 3.20 In addition, the Policy states at Section B that development proposals resulting in a loss of open space must additionally demonstrate that: (i) There is an identified excess provision within the catchment of the facility and no likely shortfall is expected within the plan period; or (ii) Alternative and improved provision will be supplied in a location well related to the functional requirements of the relocated use and its existing and future users.
- 3.21 Although the appeal proposal proposes to make part of the LoWs as open space, I do not consider that this provides the alternative and improved provision required by Policy DM17 nor does it achieve the aims of the prevailing strategy relating to open space and recreation in the WNP. Paragraph 17.32 of the WNP acknowledges that the land allocated for housing would involve a loss of an area designated as Proposed Open Space but in return some of remaining Open Space, which is currently farmland, will be donated for use as playing fields. The WNP confirms that the land to the east will continue to be designated as a Local Wildlife Site and did not seek to identify it as further open space. The nature and character of the LoWs is totally different as Ms Westover's evidence explains and I do not consider that the designation of the LoWs can be considered as compensatory Open Space in place of that lost by the proposed northern housing development.
- 3.22 Section 2 Policy SG1 effectively defines the designated Open Space outside settlement boundaries as countryside and requires proposals to comply with Policy OV2: Countryside. Policy OV2 (page 157 of CD2.2) lists a number of proposals which may require a countryside location. Housing is not within that list. In respect of residential development, the policy states:

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. Small scale rural exception sites needed to meet local affordable housing needs will be considered favourably on appropriate sites provided a local need is demonstrated by the Parish Council on behalf of their residents, based on evidence gained from an approved local housing needs survey. Where there is an identified need for certain

types of housing, schemes must demonstrate how these needs have been met.

3.23 The supporting text at paragraph 6.242 advises that, in essence, development will be restricted in the countryside to protect the landscape, character, quality and tranquillity. Development within the countryside will accordingly be limited to activities that either require a rural location or help sustain a rural community and local economy and which help protect the rural character of the areas where a development is being delivered. The text refers to exception sites and examples of those such as isolated dwellings as allowed by the NPPF. The focus is clearly on small development proposals.

3.24 The Appellant has argued that the allocated site cannot accommodate the required 120 dwellings and they consider that justifies the extension of development beyond the settlement boundaries and I consider those arguments in Section 4. However, I do not consider that the appeal proposal falls to be considered under Policy OV2. Policy OV2 is essentially concerned with small scale development and clearly allows provision for exception sites. Neither of those apply here. This development does not require a rural location as it is already allowed for by a specific allocation site for housing of which part is omitted from the appeal site. There is no argument being advanced that this development is needed to help sustain a rural community or local economy in place of a policy compliant development. Furthermore, Ms Westover's evidence demonstrates that the development causes actual harm to the rural landscape and it physically reduces the area of open space identified in the Local Plan and WNP and this area of countryside.

3.25 I consider that my views on the interpretation of Policy OV2 are reinforced by the recent appeal decision at West Mersea¹ which I have enclosed at my Appendix 1. That decision, in April 2022, related to the development of 56 dwellings outside the settlement boundary of West Mersea as defined on the then adopted and emerging development plan where a number of development plan policies restricted development outside those boundaries, including a policy of the then unmade West Mersea Neighbourhood Plan (awaiting referendum) and Policy OV2. The Inspector comments at Paragraph 50 that:

¹ APP/A1530/W/21/3285769: 102 East Road, West Mersea, Colchester

Policy OV2 of the emerging Section 2 Local Plan similarly restricts residential development in the countryside to small scale rural exception sites needed to meet local affordable housing needs. The proposal does not accord with these policies. Neither does it accord with Policy WM2 of the WMNP which allows for windfall development to take place on brownfield sites and infill plots within the settlement boundary.

3.26 The current proposal for the northern residential development comprises 35 dwellings and is not of a dissimilar scale to the proposals in the West Mersea appeal. As in the West Mersea decision, I also consider that the current appeal proposal also does not accord with Policy OV2 nor does it accord with other policies of the now adopted Local Plan and the made WNP. In my view, the policy context in the current appeal is even stronger than in the West Mersea and greater weight can be given to the relevant policies and therefore the breach to those policies.

Landscape Harm

3.27 Reason No 1 is also concerned with the impact of the development on the landscape and alleges that 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. It is considered that the harmful extension of the northern residential element of the scheme is contrary to Policy ENV1 as well as WNP Policy WIV29 and Local Plan Policy SS16.

3.28 Ms Westover addresses the landscape harm in her proof of evidence and I rely on her evidence. It is accepted by the Council that there will be some harm to the landscape as a result of the development of the allocated site for housing. Ms Westover acknowledges that the development of the allocated site will result in visual impact and adverse effects in views from local residential receptors, road, sport, natural open space and footpath users but considers that the additional visual effects arise from the northern part of the development will result in extending the visibility of built form into a wider area with resulting adverse effects on receptors.

3.29 Ms Westover also assesses the quality of the LoWs and considers that they represent a valued landscape in NPPF Paragraph 174 (a) terms (paragraph 4.7).

3.30 With regard to the impact of the appeal scheme on the landscape Ms Westover finds in her Section 7 that:

I consider that the northern residential development, extending beyond the power lines and into the area allocated for open space and sports fields will result in an urbanising effect on the landscape setting of the northern part of Wivenhoe. The landscape setting is provided by the Wivenhoe Farmland Plateau and Bromley Heaths landscape character areas which encircle the settlement to the area north and east. The development will result in cumulative adverse harm to this setting when considered against the effects arising from development of the allocated site.

The northern development area will result in built form being visible from both the Brightlingsea Road and Elmstead Road and this replace the views of open countryside which would be largely retained by the open space and sports pitches proposed by the development of the allocation site. The application proposal places the sports pitches closer to the Elmstead Road with the area of open space reduced by the additional area of housing.
(paragraphs 7.2 & 7.3)

3.31 Ms Westover is also concerned about the impact on the rights of way, users of the open space to the south and east of the site, including the LoWS as well as residential receptors. She considers that the northern development will add an additional element of urbanisation, exacerbating the magnitude of change for views for PROW and open space users and that the development will give rise to some adverse visual effects experienced by residential receptors with the northern development resulting in properties in Alexandra Drive and Brightlingsea Road experiencing a change to their outlook over an open landscape.

3.32 Ms Westover concludes that:

The proposed development is not compatible with local landscape character and setting as required by policy ENV1. The application site will result in a fragmentation of the landscape setting and will result in adverse impacts on the intrinsic character and factors which contribute to the value of the LoWS on its eastern boundary.

I also consider that the effects resulting from the development are such that

it will not be sympathetic to landscape character and landscape setting as required by NPPF Para 130 nor will it protect and enhance a valued landscape as required by NPPF Para 174 (a) and also reflected in CBC Local Plan Policy ENV1.

The proposed development does not include any landscape benefits which persuade me to consider that the landscape and visual harm arising from development of the application site as proposed development should be set aside. (paragraphs 7.6 to 7.8)

3.33 Policy ENV1 (Environment) of the Section 2 Local Plan is the replacement of Core Strategy Policy ENV1, mentioned in the Reasons for Refusal, and also applies to the protection of the countryside at Section E. The first part of Section E states that the local planning authority will carefully balance the requirement for new development within the countryside to meet identified development needs in accordance with Colchester's spatial strategy whilst ensuring that development does not have an adverse impact on the different roles of the countryside in terms of the relationship between and separate identities of settlements, valued landscapes, the intrinsic character and beauty of the countryside and visual amenity. However, as I have demonstrated above, the appeal proposal is not required to be located in the countryside under Colchester's spatial strategy and is in conflict with that strategy.

3.34 The second part of Section E applies the NPPF Paragraph 174b) wording that the '*intrinsic character and beauty of the countryside*' will be recognised and be assessed and the policy confirms that development will only be permitted where it would not adversely affect that intrinsic character and beauty and complies with other relevant policies. With regard to valued landscapes, the policy states that development will only be permitted where it would not impact upon and would protect and enhance the factors that contribute to valued landscapes, reflecting the NPPF paragraph 174 (a) requirement.

3.35 Anne Westover's evidence identifies harm to the landscape arising from the extension of development beyond the settlement boundaries. She considers that the development is not compatible with local landscape character and setting as required by Policy ENV1 nor will the appeal proposal protect and enhance the valued landscape of the LoWs. It is clear from Ms Westover's evidence that the appeal proposal does not comply with Policy ENV1 nor does it comply with the

NPPF paragraph 174 (a) in terms of the valued landscape. The appeal proposal will adversely affect the intrinsic character and beauty of the countryside and will cause demonstrable landscape harm particularly when the site is viewed from the wider landscape, including Elmstead Road, contrary to Policy ENV1.

Impact on Infrastructure

- 3.36 The second reason for refusal cites Section 1 Local Plan Policies SP2 (Recreational disturbance Avoidance and Mitigation Strategy (RAMS)) and SP6 (Infrastructure and Connectivity). These strategic policies relate primarily to mitigation requirements for the North Essex authorities.
- 3.37 Policy SP2 requires contributions to be secured from development towards mitigation measures in accordance with the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy 2018-2038 (RAMS) (CD3.8). The Essex coast RAMS aims to deliver the mitigation necessary to avoid significant adverse effects of residential development anticipated across Essex in order to protect the Habitats (European) sites on the Essex coast from adverse effect on site integrity. All new residential developments within the evidenced Zone of Influence where there is a net increase in dwelling numbers are included in the Essex Coast RAMS. The current appeal site lies within that Zone of Influence and has the potential to adversely affect the protected areas. A contribution is required in accordance with the Essex Coast RAMs by way of a S106 to mitigate the off-site impacts of the development.
- 3.38 Policy SP6 relates to Infrastructure and Connectivity and requires that all development is supported by the provision of the necessary infrastructure, services and facilities that are identified to serve the needs arising from the development. The policy lists a range of infrastructure and connectivity requirements which may be required. In the current case, the appeal proposal is required to make provision for social Infrastructure (Category C) and in particular, additional early years and childcare and secondary school travel and additional healthcare infrastructure. This provision is to be through financial contributions and is to be secured by way of a section 106 Agreement. Other requirements of Policy SP6 for the management of private car use and parking including the promotion of car clubs and car sharing, and provision of electric car charging points as set out in Criterion B, can be secured by condition where necessary.

- 3.39 The development is also required to making provision for Affordable Housing and to provide financial contributions towards the future maintenance of the proposed football pitches and open space and also towards the upgrading of Broomgrove School community swimming pool to improve sports provision in the ward.
- 3.40 At the time of determination, there was no mechanism in place to secure the necessary mitigation and infrastructure and the application was therefore contrary to these two policies. However, the Council and the Appellant are in discussions and the Statement of Common Ground includes the draft Heads of Terms currently under negotiation.
- 3.41 It is anticipated that the Section 106 will be agreed and completed before the start of the inquiry. In those circumstances I accept that the proposal would no longer be contrary to Policy SP2 and SP6 and the Council would not intend to defend the second reason for refusal.

Conclusions on Policy

- 3.42 The appeal proposal makes provision for 120 dwellings required by Policy WIV29 but does so by siting 35 of them on land outside the housing allocation within an area identified as public open space and on land allocated for the sports pitches.
- 3.43 The Section 2 Colchester Local Plan and the Wivenhoe Neighbourhood Plan are very clear that proposals for development outside the settlement boundary at Wivenhoe will not be supported unless the Neighbourhood Plan or other Local Plan policy specifically allows for it. As I have shown above, there are no other Local Plan or Neighbourhood Plan policies that allow this form and level of development in this location. Furthermore, as explained by Ms Westover, the proposal will cause demonstrable landscape harm particularly when the site is viewed from Elmstead Road.
- 3.44 Policy SP1 (Presumption in Favour of Sustainable Development) applies the presumption in favour of sustainable development contained in the National Planning Policy Framework and requires development that complies with the Plan to be approved without delay, unless material considerations indicate otherwise.
- 3.45 As I have demonstrated in this section the appeal proposal remains contrary to Section 1 Local Plan Policies SP1, SP2, SP3, and SP6, Section 2 Local Plan

Policies SG2, SS16 and ENV1 and Wivenhoe Neighbourhood Plan Policy WIV29
and therefore to the policies of the Development Plan as a whole.

4 MATERIAL CONSIDERATIONS

4.1 I have concluded in the previous section that the appeal proposals do not comply with the Development Plan. In this section, I examine whether there are any material considerations which would justify the grant of planning permission other than in accordance with the Plan. I accept that Planning benefits are a material consideration and consider them in Section 5.

4.2 I consider that the issues of this case are:

- a) Implications of the NPPF
- b) Restrictions of the Allocation Site
- c) Impact upon Local Infrastructure
- d) Other matters

a) The NPPF

4.3 The application was refused planning permission because it was contrary to the policies of the Colchester Local Plan as listed in the reasons for refusal and referred to in my previous section. As I explained in Section 3, the current Development Plan was adopted shortly after the refusal of the planning application so that policies in the Core Strategy, the Site Allocations and the Development Policies Focused Review have now been superseded and are no longer relevant to this proposal. As a consequence, the policies of the Sections 1 and 2 of the Local Plan and the Wivenhoe Neighbourhood Plan (CDs 2.1, 2.2 and 2.4) are, in accordance with Paragraph 38 (6), the relevant policies against which to assess the appeal proposal.

4.4 The National Planning Policy Framework 2021 (The Framework) is a material consideration. Paragraph 2 of the NPPF explains its role and confirms that it must be taken into account in preparing the development plan, and that it is a material consideration in planning decisions. The Framework identifies the purpose of the planning system as contributing to the achievement of sustainable development and the thrust of the document is aimed at securing sustainable development. It identifies three overarching objectives in achieving sustainable development at Paragraph 8 and states that these objectives should be delivered through the preparation and implementation of plans and the application of the

policies in the Framework but they are not criteria against which every decision can or should be judged. Planning policies and decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area.

- 4.5 Paragraph 11 provides for a presumption in favour of sustainable development which, in the case of decision making, means approving proposals which accord with an up to date development plan or, where there are no relevant development plan policies or the policies which are the most important for determining the application are 'out-of-date', granting permission unless application of policies in the Framework that protect assets provide a clear reason for refusing development or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework as a whole.
- 4.6 This is a case where there is an up-to-date development plan (paragraph 11c)) and the policies are contrary to them. Paragraph 11d) is not applicable in this case as my Section 3 has shown there are clearly relevant development policies relating to the appeal proposals and the most important policies for determining this appeal are not out-of-date having been adopted so recently. The policies cannot be considered to be out-of-date by virtue of Footnote 8 as the Council has a 5 year supply of housing land. The Council published its Five Year Housing Land Supply Statement in July 2022 (CD3.2) for the period 2022 to 2027 and shows that Colchester can demonstrate a supply of 5.25 years. This is a matter of common ground between the Appellant and the Council and forms a matter of agreement in the (draft) Statement of Common Ground which also confirms that neither party propose to advance evidence on housing supply.
- 4.7 There are also no Footnote 7 matters here that dictate that planning permission should be refused and Paragraphs 11d) i) and ii) are not engaged in this instance. No 'tilted balance' is therefore required to be applied.
- 4.8 The NPPF provides Government policy but it does not override, nor does it seek to override, the development plan and indeed the Framework reiterates the legal requirement that applications for planning permission should be determined in accordance with the development plan, unless material considerations indicate otherwise. Paragraph 12 states:

The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.

4.9 However, whilst the Framework does not seek to override the development plan it does seek to guide what development plans say and contain by requiring them to reflect and be consistent with government policy. The Framework must be taken into account in preparing those plans and by making consistency with Government Policy (as effectively enshrined in the NPPF), a requirement of soundness at paragraph 35, it effectively ensures that development plans cannot be adopted unless they are consistent with the NPPF. Therefore, the more recent the development plan the more consistent it is likely to be with current Government Policy.

4.10 Indeed Paragraph 219 confirms that existing policies should not be considered out of date simply because they were adopted or made prior to the publication of the 2021 Framework. Due weight should be given to them, according to their degree of consistency with this Framework and therefore the closer the policies in the plan are to the policies in the NPPF, then the greater the weight that may be given.

Consistency and weight of Policies of the Development Plan with the NPPF

4.11 The Appellant has indicated in negotiations on the Statement of Common Ground that they do not agree that the Development Plan is consistent with the Framework. They have indicated that none of the three parts are considered to be consistent but have not explained in what way. The Appellant's Statement of Case does not raise issues of inconsistency with the Development Plan as a whole but raised concern instead about the testing of the allocation site in the preparation of the Neighbourhood Plan. The suggestion that any part of the Development Plan is inconsistent with the NPPF is therefore a new departure.

4.12 The current Development Plan is very recent with the Section 1 and 2 Local Plan

being adopted in February 2021 and July 2022 respectively. The Neighbourhood Plan is also recent being made in 2019. All three plans were prepared and examined under the guidance of the Framework and were found sound or, in the case of the Neighbourhood Plan, to have met the basic conditions. They were therefore found to be consistent with the Framework.

4.13 There have been several iterations of the Framework and all three Plans were prepared and considered against the original 2012. However, the underlying themes of the various Frameworks relevant to the current appeal proposal have been consistent throughout, namely, promoting sustainable development, significantly boosting the supply of housing, building a strong competitive economy etc. Therefore, whilst some of the wording may have changed, Government policy has not changed on these main matters. Rather it has become stronger in some respects and now also places greater emphasis on matters of design.

4.14 **Section 1 Local Plan:** A Section 1 Local Plan was submitted in 2017 but following examination in 2018 was found to be unsound. The three Authorities took on board the criticisms of the examining Inspector and submitted a significantly amended Plan for further examination which took place in January 2020. That Plan was, subject to modifications, found to be sound and the North Essex Authorities' Shared Strategic Section 1 Plan was subsequently adopted by Colchester Borough in February 2021.

4.15 The reasons for refusal refer to Policies SP1, SP2, SP3 and SP6 of this plan. As I have explained above, Policy SP1 contains the NPPF presumption in favour of development, Policy SP3 provides the Spatial Strategy for North Essex which requires the Local Authorities to identify the hierarchy of settlements in their areas where new development will be accommodated and I find nothing in either policy which is inconsistent with the NPPF.

4.16 Policies SP2 relating to the RAMs and Policy SP6 relating to Infrastructure and connectivity are also entirely consistent with the Framework which requires that development should be supported by appropriate infrastructure and that adverse effects of any development should be mitigated. These requirements were contained in the 2012 Framework and followed through the various iterations into the current one. As a consequence, I consider that the relevant policies of the Section 1 Local Plan are entirely consistent with the Framework and can be given

full weight at this inquiry.

4.17 Section 2 Local Plan: I find a similar situation with the Section 2 Local Plan.

That Plan was prepared in accordance with the policies of the Section 1 Plan and also under the guidance of the 2012 NPPF. The relevant policies in this case are Policies SG2 which sets out the hierarchy of settlements throughout the borough as required by the Section 1 Plan (Policy SP3) and Policy SS16 which relates specifically to Wivenhoe. The Section 2 Plan was originally submitted for examination in October 2017 but the examination was delayed until the Section 1 Local Plan had been examined and adopted. The Section 2 Local Plan was then the subject of major modifications to reflect that adopted Local Plan. The Inspector's report on that Local Plan was published in May 2022 (CD3.11).

4.18 The Inspector considered the Council's approach in Policy SG1 of locating growth in and around existing urban areas and limiting development in less accessible settlements is consistent with the overarching aim of the NPPF in delivering sustainable development and is justified and appropriate. He also found in respect of Policy SG2 that the updated table in that policy demonstrated that the Council have delivered and identified sites which could provide approximately 15,970 new homes within the plan period and that this approach provided sufficient flexibility beyond the housing requirement derived from the CLPs1, building in flexibility to respond to the variations in the housing market. There was no objection raised to the specific allocations for the respective settlements.

4.19 With regard to Wivenhoe and Policy SS16, the examining Inspector stated:

Policy SS16: Wivenhoe sought to provide guidance for the preparation of a Neighbourhood Plan for the town. However, since the submission of the CLPs2 for examination the Wivenhoe Neighbourhood Plan was made in May 2019. Therefore, for effectiveness a modification is necessary to bring the policy up to date, deleting the existing policy text and replacing it with text and criteria consistent with the Wivenhoe Neighbourhood Plan including amongst other things identifying the settlement boundary, housing allocations to deliver 250 dwellings and additional land outside of the settlement boundary for the provision of a care home (MM73). We have altered the modification to assist with clarity in relation to the Neighbourhood Plan area deleting the reference

to the parish.

- 4.20 The Inspector therefore considered that with the modifications set out in his report, that policy SS16 was acceptable and I have found nothing in the Section 2 Local Plan policies relevant to this appeal that are inconsistent with the NPPF.
- 4.21 **Wivenhoe Neighbourhood Plan:** Turning to the Wivenhoe Neighbourhood Plan, the Appellant's Statement of Case asserts at paragraph 6.14 that their constraints plan prepared by JCN architects and attached as Appendix 3 to their Statement of Case, demonstrates that Figure 35 was not fully tested when the Neighbourhood Plan was made, that it was not based on any technical analysis or any comprehensive legal checks to support the developability of the land and that this in turn renders the developable area unfeasible.
- 4.22 The Town Council who prepared the Plan, relied on the evidence base of the Borough Council in respect of the availability and suitability of sites and there was nothing in that evidence base that indicated that the site could not be developed. Whilst I accept that there was no evidence submitted to demonstrate why the housing was to be positioned in the location it is, I would suggest that simply visiting the site makes it clear that siting housing development south of the electricity lines is the sensible option and that pylons and electricity lines extending through a development is not undesirable for a number of reasons. Ms Westover has explained the harm that siting development north of the power cables results in and that this is considerably greater than siting development to the south of the lines. In those circumstances, I consider that there was no need to consider alternative locations, especially as no objections were advanced to the allocation.
- 4.23 The preparation and examination of a Neighbourhood Plan is set at a lower bar than a Local Plan and there is not the requirement for the extensive weight of evidence that is required in Local Plan examinations. Nevertheless, a neighbourhood plan is expected to, and needs to, meet the basic conditions set out in the NPPF and would fail that test if it did not. Those basic conditions were met in the Wivenhoe Neighbourhood Plan as confirmed by the examining Inspector (CD1.13). I fail to understand the Appellant's argument that the constraints listed at paragraph 6.13 of their Statement of Case means that the neighbourhood plan was not fully tested. They do not allege that the Plan is inconsistent with the NPPF in their Statement of Case and I have found nothing in the Inspector's report into the examination of the WNP to suggest that she

found either Policy WIV29 or the Plan generally to be inconsistent. Furthermore, I would suggest that had the examining Inspector in the Section 2 Local Plan had concerns regarding the consistency of the WNP, he would not have recommended the main modification to bring Policy SS16 in line with it. Indeed, the most recent policy relating to Wivenhoe (Policy SS16) specifically reinforces the policy requirements of Policy WIV29 such that any proposals that are contrary to WIV29 are also contrary to the recently adopted Section 2 Colchester Local Plan.

4.24 Paragraph 30 of the NPPF gives unequivocal advice on the status of Neighbourhood Plans and states:

Once a neighbourhood plan has been brought into force, the policies it contains take precedence over existing non-strategic policies in a local plan covering the neighbourhood area, where they are in conflict; unless they are superseded by strategic or non-strategic policies that are adopted subsequently.

4.25 In this case, there is no conflict between the Neighbourhood Plan and the recently-adopted non-strategic policies in the Local Plan covering the Wivenhoe area. On the contrary, the policies of the Local Plan reinforce those of the Neighbourhood Plan and I consider that the Neighbourhood Plan including Policy WIV29 should be given full weight.

4.26 I conclude therefore that all the relevant policies of the Development Plan are consistent with the Framework and in accordance with Paragraph 219 of the NPPF can be given **full weight** in this appeal.

b) Restrictions of the Allocation Site

4.27 As outlined above, the Appellant has argued at both the application stage and in their Statement of Case that due to constraints of the site which emerged during the site acquisition process and were not known at the Neighbourhood Plan preparation stage, the site has had to be extended to the north of the electricity line that crosses the site. These constraints are described at paragraph 6.13 of the Appellant's statement of case and consist of:

- Location of the electricity pylons and line
- The eastern boundary populated by Category A and B trees and root

protection zone

- The developable area being reduced along the western boundary by no build zones along the existing water easements
- The need for an attenuation basin in the south eastern corner of the site
- A large proportion of the southern part of the site being dedicated to the Fields in Trust and therefore cannot be developed and is outside the appellant's control.

Physical 'Constraints'

4.28 Most of the Appellant's constraints (the first four above) are physical matters which are clearly apparent on the ground and are of some longstanding. The location of the electricity pylons and line that crosses the appeal site was in place at the time of the preparation of the Neighbourhood Plan and examination and would have been taken into account in the allocation of the site. Indeed the housing allocation is shown to the south of the power lines which was clearly a defining feature when considering the area of land to be dedicated to housing.

4.29 The trees along the eastern boundary are mature trees and enhance the site as well as helping to contribute towards wildlife and landscape. I would expect any developer, especially an experienced housebuilder like Taylor Wimpey, to know that trees of this nature will be required to be retained and that allowance for their root protection zone will also be required. It is a common requirement on development sites of this nature.

4.30 With regard to the no build zone of 5m for the watercourse on the western boundary, the existing properties along the boundary with Richard Avenue and Henrietta Close are all built close to this boundary and have relatively short rear gardens. I would expect therefore that any design would need to take this into account and that it would not be unusual for a landscape buffer to be created between the new development and existing dwellings to ensure an acceptable level of amenity for the existing residents. The Design and Access Statement states at page 6 that a surface water drainage easement runs along the south western boundary and to the rear of the existing properties in Richard Avenue and Henrietta Close. It states that a six metre wide buffer is required and it can be handled in the same manner as the offset on the eastern boundary. distance

of 6 metres is not significant in those circumstances and the development as proposed is still relatively close to the existing properties. It does not appear to me that this easement represents a constraint on building close to the boundary but instead contributes to securing an acceptable level of amenity for existing residents.

4.31 Again, there is nothing surprising in there being a need for SUDs requirements. That is a normal requirement for development and often addressed by the use of an attenuation basin which the Appellant has chosen to use here. This can be used in part as open space and a feature of the site.

4.32 I do not find any of the above 'constraints' to be either unusual, or to be unknown requirements of the development either when the site was being considered for allocation or when the site was being considered by developers.

Ownership 'Constraint'

4.33 Turning to the Appellant's assertion that a large proportion of the southern part of the site is dedicated to the Fields in Trust and therefore cannot be developed as well as being outside the appellant's control, I do not consider that this precludes the site being incorporated into the appeal site and developed as anticipated by the allocation in Policy WIV29.

4.34 The appeal site excludes approximately 0.3ha of the allocated land. That area of land was formerly in the ownership of Colchester Borough Council who transferred it to Fields in Trust in February 2013 together with the area directly to the south. A copy of the Deed of Dedication is enclosed at my Appendix 2 and shows the area subject to the deed in the plan at the end of the document. Clause 4 of the Deed allows FIT to dispose of the land provided that, if required, the Council replaces the property with a piece of freehold land approved by FIT which is of equivalent or better quality than the property in the same catchment area and as accessible to the public as the property and also enters into another deed of dedication.

4.35 It seems to me therefore that there is no overriding restriction to the use of this land for development provided that replacement open space of a better quality is provided in turn. As the current proposals include the provision of both informal and formal open space, I would expect that to satisfy the requirements of Clause

4 in terms of the replacement land.

- 4.36 I also note that this land was included in the site being advanced for development in the call for sites for the Colchester Local Plan in 2015 and also in 2017. The Council's most recent Strategic Land Availability Assessment (SLAA) June 2017 (CD3.4) contains the Council's assessment of the sites submitted. The plan on Page 67 shows the sites being advanced under the call for sites at Wivenhoe and a summary assessment of those sites is at page 82. The site identified as WIV04 includes all the land currently forming the appeal site together with the land omitted to the south and covered by the covenant at Appendix 2. The same site was formerly identified as site 108 in the earlier Call for Sites which took place in 2014 and 2015. The site is listed in Appendix 3 (page 82) to the SLAA as comprising 15.37ha and is assessed as being available and achievable.
- 4.37 The Town Council relied on the Borough Council's evidence base when preparing the Wivenhoe Neighbourhood Plan and therefore considered the sites listed in the SLAA as shown in Figure 31 of the Plan. As can be seen, the subject site, identified as site WIV04/180, included all the land subsequently allocated for housing as well as the additional land now incorporated into the appeal site to the north and also part of the LoWs.
- 4.38 There was no evidence to suggest at the preparation and examination of the WNP that the land was not available for development. The 2013 Deed (Appendix 2) preceded the 2018 examination and no representations were advanced objecting to the proposal and stating that the site was not capable of being developed, i.e. this was not at issue during the plan-making process.
- 4.39 Since the WNP was adopted, the area in question has changed hands. As the Council failed to maintain the land, I understand that the previous owner has reclaimed the land and transferred ownership back to himself. The land registry entry shows the transfer of ownership is dated 8 October 2020 (my Appendix 3) and that the current owner is the same person who originally submitted the site for development in the Call for Sites. He is also the same person who the Appellant served notice under Certificate B when submitting the planning application on 26 March 2021. It would appear therefore that the land was in the same ownership as at least part of the rest of the appeal site when the application was submitted.

4.40 Notwithstanding these facts, the Appellant claimed that the land was in separate ownership and outside their control. If that was the case, it is not unusual for development sites to be in different ownership and to be subject to land assembly. That appears to have happened with the planning application as demonstrated by Certificate B. The Council has seen no evidence from the Appellant to demonstrate that the whole of the allocated site is not capable of being brought forward as part of a comprehensive scheme. From my findings to date, the site appears to be in the same ownership as the rest of the land when it was being advanced as a site for development. The Appellant has not explained why it cannot be developed.

4.41 It is clear from the above, that the issue of the FIT has the potential to be overcome by the provision of improved public open space nearby. The Appellant's arguments of constraints on the site do not therefore justify the development of the land to the north outside the settlement boundary.

Lack of Compliance with Policy WIV29

4.42 The Appellant argues that the site as constrained cannot accommodate the required 120 dwellings but do not provide any evidence to demonstrate this assertion.

4.43 The requirements of Policy WIV 29 are twofold in respect of the 120 dwellings. Firstly they are required on the allocation site which is not complied with in this scheme. Secondly they are required to meet the criteria set out in that policy. That also is not complied with in this proposal for the reasons I explain below.

4.44 The WNP was modified by the Examining Inspector to make the 120 dwellings a minimum figure in line with the arguments that had been advanced by promoters on other sites in Wivenhoe. The Appellant relies on providing this figure as justification for locating 35 dwellings outside the settlement boundary and has stated that they have complied with the requirements of the policy in their table on page 23 of their Statement of Case.

4.45 While I accept that they have adhered to most of the eleven criteria contained in Policy WIV29, they have not sought to meet those within the allocated site. Furthermore, I note that they have simply met the minimum requirement of 45 small dwellings but have made them all two bedrooms and no one bedroomed

properties are provided although the Design and Access Statement expressly states that a minimum of 45 of the new homes will have one or two bedrooms and therefore be suitable for older people, single people or young couples (page 7). The WNP states that 45 small dwellings is the minimum figure that should be provided and highlights a requirement for smaller homes of one and two beds. The supporting text explains there is a high proportion of three/four bedroom houses in the Wivenhoe Parish area compared to smaller homes suited for first time buyers and for single people (paragraph 16.21). However, the appeal scheme, like the rest of Wivenhoe, is also very much dominated by the three and four+ bedroom homes which comprise some 63% of the total provision on site. This dominance of larger housing, contrary to the aspirations of the Neighbourhood Plan, is facilitated by spreading development into the northern land and restricting the smaller dwellings to the absolute minimum number specified in the policy.

4.46 The exclusion of the southern part of the allocated site also means that the shared use footpath and cycle track required by Criterion (ix) of the policy to link the development to the facilities at Broad Lane Sports Ground and the public footpath to the south of the site, stops considerably short of the public footpath. The footpath/cycle link is shown on the submitted plans as running within the eastern boundary of the appeal site and terminating at its southern boundary. It does not connect to, and appears to be some distance from, both the Play Area identified in Figure 35 and the Public Footpath 14 which runs from the end of Henrietta Close/Paddock Way southwards. The appeal proposals contain no provision to enable this linkage and the Appellant states, in the table at paragraph 6.7 of their Statement of Case , that it is unlikely to be provided.

4.47 The Appellant's claim that they have met the requirements of Policy WIV29 therefore is not accurate.

Development of the Allocated Site

4.48 The Appellant does not seem to have given consideration to developing the full housing allocation site other than to highlight constraints which they say make it unfeasible. There has been no demonstration to show that a policy compliant development on the allocated site is unacceptable or unachievable to justify the Appellant's proposal to extend northwards.

- 4.49 In order to consider the impact of the appeal proposals on the landscape, Ms Westover has had to consider the impact of a policy compliant development on the allocated site before being able to assess the additional harm created by the northern residential development. To do so, she has evolved some general design parameters at her paragraph 3.8. Based on these parameters, Ms Westover confirms there would be adverse impacts of developing the allocated site. However, that was to be expected and would have been accepted when allocating the site.
- 4.50 Both Ms Westover and I acknowledge that the nature of the site with its boundary trees, the ditches and the electricity line, means that the allocated site needs to be carefully designed but constraints of this type are not unusual. I consider that a revised design along the lines suggested by Ms Westover is potentially capable of being accommodated within the allocation site for the reasons I explain below.
- 4.51 Higher density: Based on the areas set out in Figure 2.2 in the Statement of Common Ground, the current scheme has a density of 31 dwellings per hectare. Paragraphs 17.33 of the WNP indicates that the proposed allocation will have an overall average density of 30 dwellings per hectare. There is no specific density requirement in the policy or in the WNP other than the requirement to provide a minimum of 120 dwellings. Section 2 Local Plan Policy DM9 - Development Density (CD2.2 page 179) confirms that *The Local Planning Authority will support development densities that make efficient use of land and relate to the specific opportunities and constraints of proposed development sites*. It also does not set out minimum densities but requires that all residential development needs to be at an appropriate density and massing, having regard to various onsite and off-site considerations which include the character of the site (i) and an appropriate mix and type of housing as informed by the various housing policies set out in the Local Plan (vii). There is therefore no policy that would preclude a higher density on the allocated site than the 30 ha originally anticipated. A higher density would allow for a more efficient use of land as required by the NPPF and also for a greater mix of smaller dwellings.
- 4.52 Greater mix of smaller dwellings: This would allow more 1 and 2 bedroomed dwellings to be provided than the current minimum provision of 37% in the appeal scheme. It would also allow one bed dwellings to be provided as required by the policy and for the small dwellings to be built as bungalows and apartments as

well as the terraced units contained in the appeal scheme, thereby helping to address the lack of small dwellings in Wivenhoe as highlighted at my paragraph 4.44 above. It would also assist in meeting the increasing numbers of single person households within Colchester generally as identified in the Section 2 Local Plan at paragraph 7.46. which states that in 2021, the average household size was projected to shrink to around 2.31 persons, and single person households are likely to grow to about 35% of the total and that:

The Council's Strategic Housing Market Assessment indicates that the number of lone parent households is expected to increase the most in the Housing Market Area over the period 2015-2037, followed by one person households. Couples with children are projected to fall in number. (CD2.2 page 180).

- 4.53 There is therefore a clear need for small dwellings not only in Wivenhoe but in the wider area of Colchester that a policy compliant scheme would contribute towards. In addition, there is no reason why apartments and even a few bungalows could not be accommodated. There are already existing apartments off Richard Avenue and Henrietta Close and were clearly considered to be acceptable when the Broadfield estate was constructed.
- 4.54 Variation of built form: Anne Westover confirms that there is scope for a greater variation in building heights on the allocated site which would provide visual interest. The current scheme is all two storey housing as shown on Drwg No TW027-PL08 Rev F – Storey Heights. The only single storey buildings are garages. There is scope for single storey, two, two and a half and even three storey may be considered subject to location and impact.
- 4.55 Reduced parking provision with smaller dwellings: the provision of smaller one bed dwellings would also result in a reduction of parking provision and therefore the amount of land needed to accommodate parking. The Council's parking standards contained in its SPD – Vehicle Parking Standards (CD3.10) currently requires 1 space per 1 bed dwelling and 2 spaces for all 2 plus bedroom dwellings.
- 4.56 Pedestrian/cycle routes linking housing and open space: these linkages would still be capable of being provided and would allow direct access from the allocated site to both the open space to the north of the site and also to the play

areas and open space to the south. A revised layout and design for the allocated site could also provide a better footpath/cycleway route through the site and a more suitable linkage with the public footpath to the southwest.

4.57 Connection to land to the south and existing Public Footpath: the linkage required by Policy WIV29 (ix) would be achieved. It would also allow direct access for future residents to the play space to the south and potentially reduce the amount needed within the development.

4.58 SUDs: This remains a requirement whichever scheme is provided and would need to be incorporated into the development.

4.59 Landscape Buffers: Again these are requirements of whichever scheme is provided and their need and importance are addressed in more detail in Anne Westover's evidence.

4.60 Easement for Electricity Line and Pylons: an easement for the power lines would be required for the housing but a smaller area of the site would be sterilised and there would be no need to lose 10% of the total site as stated in the Design and Access Statement (page 6) to allow easements of 7.5m on each side of the lines. The land could still form part of the Public Open Space as anticipated by Figure 35 in the WNP.

4.61 Development on the allocated site as suggested above would result in a number of benefits over the current scheme;

- it would provide a greater number of smaller units,
- it would provide more Public Open Space,
- it removes electricity lines from the middle of a residential development;
- it provides better and more direct linkages to the neighbouring and surrounding area including access to the play space to the south, and
- it also allows the potential for redesigning the Public Open Space and sports pitches if desirable.

4.62 There has been no evidence submitted to demonstrate that the whole of the Policy WIV29 housing allocation site cannot be brought forward as part of a

comprehensive scheme on the appeal site, nor has it been demonstrated that it cannot accommodate the 120 dwellings required by policy. In the absence of any such a demonstration I conclude that there is no justification for the appeal proposal to locate 35 of the 120 dwellings on land identified for open space and located outside the settlement boundary. The appeal proposal does not comply with Policy WIV29 and therefore, also does not comply with Policy SS16 of the Section 2 Local Plan and Policy SP1 of the Section 1 Local Plan.

c) Impact upon Local Infrastructure

4.63 The Section 1 Local Plan contains the strategic policies (SP2 and SP6) that require development to make provision at the appropriate time for infrastructure that is made necessary for the development. The NPPF also requires such facilities to be provided to enhance the sustainability of communities and residential environments.

4.64 In addition to housing, the appeal proposal includes outside sport facilities, play areas and more general open space.

4.64.1 The Council and the Appellant are in discussions and a draft Section 106 Agreement has been prepared to address these requirements. The draft also makes provision for 20% affordable housing consistent with Policy WIV29 of the Neighbourhood Plan.

4.65 Several of the consultation responses indicate that existing infrastructure will need to be improved to accommodate the additional population. These can be managed through the financial contributions towards early years and childcare provision and towards travel for Secondary Education as well as for healthcare.

4.66 In addition to the above, the S106 will make provision for a financial contribution towards upgrading Broomgrove School Community Swimming Pool including changing room provisions. The officers report to Committee (CD1.1) confirmed that there is a lack of sports provision in the ward and this project therefore will contribute towards the aim to positively impact on the health and wellbeing of the community by offering opportunity for exercise.

4.67 The Section 106 also makes provision for the transfer of ownership to the Council of the football pitches and public open space (excluding the LoWs) and

appropriate contributions towards their future maintenance.

4.68 The Appellant and the Council are in continuing discussions on the draft Section 106 agreement and it is anticipated that a signed and completed S106 will be submitted before the start of the Inquiry. In the event that the Agreement makes acceptable provision for these matters and is signed, the Council confirms that the impacts of the development would be adequately mitigated.

d) Other matters

4.69 The Appellant has referred to an appeal decision² in Wem in Shropshire in their Statement of Case and considers it to be of relevance. I disagree. The appeal was considered on the basis of insufficient justification and information provided for the development of land that is located beyond the housing allocation. That point I accept is similar to the current proposal. However, I do not consider there are any other similarities that would make the Wem appeal relevant to the consideration of the current appeal proposal for the following reasons.

4.70 The Wem policy context is totally different with a Core Strategy dated 2011 and the Allocations Plan dated 2015. In contrast, the Colchester Development Plan is recent and up to date.

4.71 The Inspector refers to the fact at paragraph 13 that the Wem allocation and relevant policy acknowledges that additional land may be included albeit for community purposes. No such allowance is made in the Wivenhoe Neighbourhood Plan or the Section 2 Local Plan, nor is one needed and Policy SS16 of the Colchester Section 2 Local Plan specifically states that development will not be permitted outside the Settlement boundary unless other policies in the Plan allow it. I have shown that there are no policies that would allow the current appeal proposal.

4.72 The Wem site was allocated in the 2015 document and it was only after the allocation that the gas pipe was identified as crossing the site. In contrast, the Wivenhoe appeal site was allocated in 2019 and the WNP policies formed part of the 2022 Section 2 Local Plan. The allocation site had no hidden constraints that have become known since the allocation. All the constraints identified by the Appellant in the current case are clearly visible at any site inspection. The only

² APP/L3245/W/20/3263642 - Land off Lowe Hill Road, Wem SY4 5UR

non-visible constraint is that of ownership and at the time of the allocation the land was in the ownership of the Borough Council. The fact that the land was, and still is, in separate ownership to that owned by the Appellant does not justify its exclusion for the site and development of other land. The planning system allows applications to be made on land within different ownership and the Appellant has advanced no proof that it cannot develop the site which is owned by the same person they served notice on for the rest or part of the rest of the appeal site.

4.73 I therefore consider that the Wem appeal decision is not relevant and can contribute very little to the determination of the current appeal.

5 THE PLANNING BALANCE

5.1 As I have set out above, the appeal scheme conflicts with policies of the adopted Local and Neighbourhood Plans and the development plan taken as a whole. These plans are recent, up to date and relevant to the appeal proposal and therefore full weight can be given to the policies cited in the decision notice. Of course the conflict with the development plan means that, unless material considerations indicate otherwise, a refusal of permission should follow.

5.2 I have demonstrated in the previous sections of my evidence that the material considerations advanced by the Appellant do not justify the development of 35 dwellings outside the allocated site and outside the settlement boundary of Wivenhoe. The Appellant lists various benefits of the scheme at paragraph 9.6 of their Statement of Case. Benefits of a development represent material considerations and I therefore consider the benefits of the scheme put forward by the Appellant to assess whether they provide sufficient justification to justify determining the appeal scheme otherwise than in accordance with the plan.

Appellant's Benefits of the Proposals

5.3 Sections 6 and 9 of the Appellant's Statement of Case claims that the proposed development will bring significant planning benefits. The Appellant claims that virtually all are benefits which should be given significant weight in the planning balance. For ease of reference, I have copied these out in the table below. I have considered whether these are actual benefits and if so, are they particular only to the appeal scheme or would they also be delivered by a policy compliant scheme as outlined in my paragraphs 4.47 to 4.61. I also state what weight I attach to them (if any).

TABLE 1: APPELLANT'S BENEFITS

Appellant's Benefits	Benefit	Benefit specific to Appeal proposal?	Benefit of Policy Compliant Scheme	Weight
Highly sustainable location	No	No		Site was assessed as being sustainable when allocated. NPPF requirement that sites are sustainable.
20% affordable homes at	Yes	No	Yes	Significant weight to

a policy compliant tenure split of 79% affordable rent and 19% shared ownership				provision of affordable housing but WIV29 requirement so both schemes provide it.
New jobs during construction phase	Yes	No	Yes	.
Varied mix of housing sizes, and typologies,	Yes	No	Yes	Limited weight – Scheme does not provide WIV29 number or full mix of unit sizes required.
Mixed housing supply will result in better labour and employment mix in Borough	Yes	No	Yes	Moderate – new jobs will contribute to the economy
(Extremely) High quality residential dwellings	No	No		No Weight High quality design is a requirement for all development. (NPPF Para 126)
(Extremely) high levels of amenity and quality	No	No		No weight. Considerations of amenity are fundamental to good design (NPPF para 126)
High quality public realm and landscaping with generous tree and soft landscaping.	Yes	No	Yes	Moderate weight: Policy Presumption against loss of landscape features and wildlife and for improved biodiversity.
New connection to recreation ground and improvements to recreation ground north south and east west connections	Yes	No	Yes	WIV29 requirement to make development acceptable. Greater weight to policy compliant development which makes ALL the required connections.
Flood Risk and drainage controlled	No	No		Development that creates problems of flooding is unsustainable
Biodiversity Net Gain score of 35.88% Planting and landscaping protect and encourage wildlife and biodiversity	Yes	No	Yes	Moderate weight: Policy Presumption against loss of landscape features and wildlife and for improved biodiversity. NPPF requirement for improved biodiversity

				and net gain.
Wide range of sustainability principles	No	No		No weight - NPPF requirement to make development sustainable and moving to low carbon economy
Package of financial and non-financial planning obligations	No	No		No weight. Applications are required to mitigate the impacts of development – Policy requirement of LP and NPPF.

5.4 In my view, and as shown in the above table, the appeal scheme does not provide any benefits which would not also be provided by a policy compliant scheme on the allocated site. In fact, a policy compliant scheme on the lines set out in my paragraphs 4.47 to 4.61 above, would provide a greater number of benefits than the appeal scheme as it would provide a greater number and mix of smaller dwellings, a larger area of Public Open Space and would provide better linkages. Most of the benefits cited by the Appellant are specific policy requirements set out in Policy WIV29 or the NPPF, and whilst they bring benefits through new housing, public open space and affordable housing, none are specific to the Appeal proposal. Many of the other ‘benefits’ are fundamental planning considerations and requirements that all developments need to comply with to ensure that the development is acceptable in its impacts on both the environment and on the living conditions of future and existing residents. They are not benefits and they should not be given significant weight in the planning balance.

5.5 I conclude therefore, that the benefits cited by the Appellant do not constitute key planning benefits that are particular to the appeal scheme. Most would be realised if a policy compliant development took place as required by the Neighbourhood Plan and they cannot therefore attract sufficient weight to justify the setting aside of the planning policies for this site and in the Development Plan as a whole. That setting aside is very substantially harmful in itself.

Overall Conclusions on Planning Balance

- 5.6 From my assessment of the very limited benefits that would flow as a direct result of this development, I do not consider that they provide a justification for a departure from the plan-led outcome, or that they are of such a scale and significance that they outweigh the harm to the plan-led system and to the character and appearance of the area. I consider that the appeal proposal results in some dis-benefits when compared with a development just on the allocated site with the limited linkage to the land to the south, the reduced area of open space and the limited provision of small dwellings. I do not include, in this assessment, the harm that would arise were the s.106 agreement fail to provide sufficient mitigation for the various acknowledged impacts. If no suitable s.106 is finalised the harm would be considerably greater, and the outcome the same.
- 5.7 Paragraph 15 of the NPPF states that the planning system should be 'genuinely plan-led'. In this case, the appeal scheme conflicts with the development plan taken as a whole and causes demonstrable harm. For the reasons I have given, I do not consider the NPPF, or any other material consideration provides a basis to determine the appeal scheme otherwise than in accordance with the development plan in this instance. I therefore consider that the planning balance clearly favours withholding permission and dismissing the appeal.

6 CONCLUSIONS AND SUMMARY PROOF OF EVIDENCE

6.1 The application is a full application for the construction of residential development, access, landscaping, public open space, and associated infrastructure works on land at Broadfields, Wivenhoe, Colchester

6.2 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. I have demonstrated in Section 3 of my evidence that the proposals are contrary to the policies of the development plan cited in the reasons for refusal, namely Section 1 Local Plan Policies SP1, SP2, SP3, and SP6, Section 2 Local Plan Policies SG2 and SS16 and Wivenhoe Neighbourhood Plan Policy WIV29.

Principle of Development

6.3 There is no dispute between the parties that the principle of development of the site allocated for housing in the Development Plan, within the recently identified settlement boundary of Wivenhoe, is acceptable. The site is specifically identified for housing in the Section 2 Local Plan and the WNP and the principle of development is consistent with strategic policies Policy SP1 and SG3 and also site specific policies SS16 and WIV29.

6.4 However, the appeal proposal places 35 of the proposed 120 dwellings outside the adopted settlement boundary where such development is contrary to the above policies.

6.5 Policy SS16 of the Section 2 Local Plan reinforces the policies of the WNP and precludes development taking place outside the settlement boundaries. The Policy states that such proposals will not be supported unless the Neighbourhood Plan or other Local Plan policy specifically allows for it. I have demonstrated that there are no policies in the Local Plan and the Neighbourhood Plan that allow such development and that the proposal does not comply with either Policy DM17 (Retention of Open Space and Recreation Facilities) and Policy OV2 (Countryside).

Landscape Harm

6.6 Reason No 1 also alleges that the scheme will cause demonstrable landscape

harm and Ms Westover addresses this matter in her evidence. She initially assesses the likely harm of a policy compliant scheme on the allocated site and then considers any additional impact of the appeal proposal. In her assessment she comes to the conclusion that the adjacent LoWs is a valued landscape in NPPF Paragraph 174 (a) terms.

6.7 Ms Westover concludes that the effects resulting from the development are such that it will not be sympathetic to landscape character and landscape setting as required by NPPF Para 130 nor will it protect and enhance a valued landscape as required by NPPF Para 174 (a) and also reflected in CBC Local Plan Policy ENV1. She concludes that the proposed development does not include any landscape benefits which persuade her to consider that the landscape and visual harm arising from development of the application site as proposed development should be set aside.

6.8 AW finds that there is demonstrable landscape harm and I therefore consider that the appeal scheme is contrary to Section 2 Policy ENV1 (Environment) as the proposal is not required to be located in the countryside and is in conflict with Colchester's spatial strategy.

Impact on Infrastructure

6.9 At the time of determination, there was no mechanism in place to secure the necessary mitigation and infrastructure and the application was therefore contrary to Policies SP2 and SP6. However, a draft S106 has been produced and it is anticipated that the Section 106 will be agreed and completed before the start of the inquiry. In those circumstances I accept that the proposal would no longer be contrary to Policy SP2 and SP6 and the Council would not intend to defend the second reason for refusal.

6.10 There are no Local or Neighbourhood Plan policies that allow this form and level of development outside the settlement boundaries of Wivenhoe. Further, the proposal will also cause demonstrable landscape harm particularly when the site is viewed from Elmstead Road and the appeal proposal remains contrary to (Section 1 Local Plan) Policies SP1, SP2, SP3, and SP6, (Section 2 Local Plan) Policies SG2, SS16 and ENV1 and WNP Policy WIV29 and therefore to the policies of the Development Plan as a whole.

6.11 In Section 4 of my evidence I consider if there are any material considerations that justify the grant of planning permission other than in accordance with the Plan.

The NPPF

6.12 The National Planning Policy Framework 2021 is a material consideration. However, when assessing the proposal in the context of Paragraph 11, I conclude that this is a case where there is an up-to-date development plan (Paragraph 11c)), that Paragraph 11d) is not applicable as there are clearly relevant development policies relating to the appeal proposals and the tilted balance is not engaged by virtue of Footnote 7 or by Footnote 8. The parties agree that the Council can demonstrate a supply of 5.25 years.

6.13 Turning to consistency of the policies of the Development Plan with the NPPF and therefore the weight that should be given to them, I have demonstrated that the current Development Plan is very recent. The two Local Plan documents were tested against the requirements of the NPPF and both documents were found sound. The Neighbourhood Plan was also tested against the Framework and met the basic conditions. I have found nothing in any of the respective Examining Inspectors' reports to indicate that they found any part of the Development Plan to be inconsistent with the NPPF.

6.14 The Appellant has indicated they do not consider that the Development Plan is consistent with the Framework. Their previous assertion of inconsistency related to the WNP and was based on their claim that the constraints they identify on the site renders the developable area of the WIV29 allocation unfeasible (and thereby justifying the building of 35 houses outside the settlement boundary). I do not accept that the Appellant's constraints demonstrate inconsistency in the WNP. Had the examining Inspector in the Section 2 Local Plan had any such concerns he would not have recommended the main modification to bring Policy SS16 in line with it and requiring that Policy SS16 specifically reinforcing the policy requirements of Policy WIV29 such that any proposals that are contrary to WIV29 are also contrary to the recently adopted Section 2 Colchester Local Plan.

6.15 I conclude that all the policies of the Development Plan relevant to this appeal are consistent with the Framework and that in accordance with NPPF Paragraph 219, can be given full weight.

Restrictions of the Allocation Site

6.16 The Appellant's constraints of the site at paragraph 6.13 of their statement of case are mostly physical matters, they are clearly apparent on the ground and are of some longstanding and would be apparent at the time of the preparation and examination of the WNP. None are unusual and an experienced housebuilder such as Taylor Wimpey would be fully aware of their implications.

6.17 Turning to the issue of Ownership 'Constraints on the southern part of the allocated land, this is dedicated to the Fields in Trust as shown in the Deed of Dedication at my Appendix 2. However, that deed does not exclude development subject but requires that better compensatory open space is provided. As that is what is proposed in this case, I consider the Deed is potentially capable of being resolved. However, it is also a fact that the ownership of that land changed in 2020 (see my Appendix 3) and the current owner is the same person who not only put forward the site for development in the Call for Sites but is the same person that the Appellant served Notice No 1 on at the application stage.

6.18 I consider therefore that the constraints put forward by the Appellant do not demonstrate that a policy compliant scheme on the allocation site cannot be achieved.

6.19 I also consider that the appellant has not complied fully with Policy WIV29 on three counts. Firstly they locate 35 dwellings outside the settlement boundary. Secondly they have provided the minimum requirement of 45 small dwellings but have not provided any one bed properties as required by Policy WIV29(i) and the scheme, like the rest of Wivenhoe, is dominated by the three and four+ bedroom homes representing 63% of the total provision on site. Thirdly, the exclusion of the southern part of the allocated site also means that the shared use footpath and cycle track required by Policy WIV29 (ix) does not link with the play space and public footpath to the south but terminates at the edge of the appeal site. I consider therefore that the Appellant's claim that they have met the requirements of Policy WIV29 is not accurate.

6.20 The Appellant does not seem to have given consideration to developing the full housing allocation site. Anne Westover has drawn up potential parameters for any development and I consider that a development based on those would result

in a number of additional benefits with a greater number of smaller units, more Public Open Space, removal of the electricity lines from the middle of a residential development and better and more direct linkages to the neighbouring and surrounding area including access to the play space to the south.

- 6.21 In the absence of any proper consideration or demonstration that the allocated site cannot be developed with a WIV 29 policy compliant scheme, I conclude that there is no justification for the appeal proposal to locate 35 of the 120 dwellings on land allocated for open space and located outside the settlement boundary. The appeal proposal does not comply with Policy WIV29, Policy SS16 of the Section 2 Local Plan and Policy SP1 of the Section 1 Local Plan.

Impact upon Local Infrastructure

- 6.22 The Appellant and the Council are in continuing discussions on the draft Section 106 agreement and it is anticipated that a signed and completed S106 will be submitted before the start of the Inquiry. In the event that the Agreement makes acceptable provision for the necessary mitigation and infrastructure and is signed, the Council confirms that the impacts of the development would be adequately mitigated.

The Planning Balance

- 6.23 At Section 5 I consider various benefits of the development advanced by the Appellant. I conclude that the appeal scheme does not provide any key benefits which would not also be provided by a policy compliant scheme on the allocated site and that, in fact, a policy compliant scheme could provide a greater number of benefits than the appeal scheme. Most of the benefits cited by the Appellant are specific policy requirements set out in Policy WIV29, and whilst they bring benefits through new housing, public open space and affordable housing, none are specific to the Appeal proposal. Many of the other 'benefits' are fundamental planning considerations and requirements that all developments need to comply with to ensure that the development is acceptable in its impacts on both the environment and on the living conditions of future and existing residents and also to ensure that new development is constructed on sustainable principles.

Overall Conclusions on Planning Balance

- 6.24 From my assessment of the very limited benefits that would flow as a direct result

of this development, I do not consider that they provide a justification for a departure from the plan-led outcome, or that they are of such a scale and significance that they outweigh the harm to the plan-led system and to the character and appearance of the area. I consider that the appeal proposal results in some dis-benefits when compared with a development just on the allocated site with the limited linkage to the land to the south, the reduced area of open space and the limited provision of small dwellings. I do not include, in this assessment, the harm that would arise were the s.106 agreement fail to provide sufficient mitigation for the various acknowledged impacts. If no suitable s.106 is finalised the harm would be considerably greater, and the outcome the same.

6.25 Paragraph 15 of the NPPF states that the planning system should be 'genuinely plan-led'. In this case, the appeal scheme conflicts with the development plan taken as a whole and causes demonstrable harm. For the reasons I have given, I do not consider the NPPF, or any other material consideration provides a basis to determine the appeal scheme otherwise than in accordance with the development plan in this instance. I therefore consider that the planning balance clearly favours withholding permission and dismissing the appeal.