

APPEAL REF: APP/A1530/W/22/3305697

**IN THE MATTER OF
APPEAL BY TAYLOR WIMPEY UK LIMITED (“TWL”)**

LAND AT BROADFIELDS, WIVENHOE, COLCHESTER

OPENING SUBMISSION ON BEHALF OF THE APPELLANT

Introduction

1. This is an appeal by Taylor Wimpey UK Limited (“TWL”) against the decision of Colchester City Council (“the Council”)¹ to refuse planning permission for the ‘*construction of residential development (Use Class C3), access, landscaping, public open space and associated infrastructure works*’ (“the proposed development”) at Land at Broadfields, Wivenhoe, Colchester (“the Appeal Site”).
2. This is an Appeal Site which relates to some 15 ha.² The Site is located in Wivenhoe at the north-eastern edge of the town.³ It abuts the settlement edge. Wivenhoe is identified as a Sustainable Settlement in Colchester’s spatial hierarchy.⁴ Accordingly, the Site is an eminently sensible location for residential development: the fact that is so is the reason that policy Wiv 29 in the Wivenhoe Neighbourhood Plan (“WNP”) allocates the land for a minimum of 120

¹ When the application was determined, the Council was then Colchester Borough Council. It is now Colchester City Council following the grant of City status on the 23 November 2022

² 15.02 ha.

³ See Fig 2.1 at §2.2 of the SoCG.

⁴ Table SG1 in line with the spatial strategy (Policy SG1, Section 2 Local Plan)

dwellings (subject to conditions⁵). That allocation forms part of the statutory development plan for the area.

3. The focus of this appeal is narrow: whether or not the scheme complies with the Wiv 29 allocation and the development plan as a whole. There is much that is agreed between the parties. First, the Council acknowledge that the principle of delivering new homes on the allocated part of the site is acceptable.⁶ Second, the principle of providing public open spaces and the provision of land for sports pitches, is agreed between the parties, as is their location.⁷ The essence of the case then is really about (1) whether it is acceptable for the residential development to extend to the land to the north of the pylons (and therefore partly outside the area allocated for residential development in the WNP Fig 35) and (2) whether there is unacceptable landscape harm (and resulting conflict with the development plan) that arises from the built form north of the pylons. We address each of those briefly in these opening submissions.

The ‘necessary deviations’

4. The area of the appeal site with built development extends to just 3.74ha: less than a quarter of the overall site (15ha) and less than the 4.06ha identified in the Wiv 29 policy.⁸ A further 2 ha is set aside for sports pitches, and 9.28 ha of land will form the new open space (of which 4.32ha forms part of the non-statutory designated Wivenhoe Cross Pit Local Wildlife Site (“LoWS”). This will not be developed and will be made publically available, for the first time, by the development. The location of the pitches, and open space are all agreed.⁹
5. Wiv29 requires that a minimum of 120 dwellings be provided on the Site. The Site has several constraints. These include the pylons towards the north of the area allocated for residential development which contains a no *build zone*’ on either side.¹⁰ The eastern boundary is characterised by trees with root protection areas that extend into the residential area.¹¹ Water

⁵ (i) to (xi)

⁶ §7.9 SoCG

⁷ §7.10 SoCG

⁸ Fig 35.

⁹ Agreed in the SoCG.

¹⁰ CD1.1 §16.24.

¹¹ Ibid.

easements result in a no build zone to the west.¹² In addition, some of the southern part of the site is dedicated to the national playing fields association (Fields in Trust) and therefore cannot be developed. Accordingly, whilst the allocation extends to 4.96 ha, only 2.89 ha is in fact developable.¹³ It is the Appellant's case that there are therefore some '*necessary deviations*' which need to be made from Wiv 29 as a result of the technical constraints. The professional officers of the Council do not disagree that the Appellant's planning response is an eminently sensible one. Notwithstanding this, the Wivenhoe Town Council ("WTC") in their consultation response highlight some alternative suggestions to building to the north. We deal with both the submissions made by WTC and the Council, briefly.

Density

6. WTC stated that the density of the development south of the pylons '*could be increased so that the development area does accord with the WNP*'.¹⁴ Part of the response was so that the development would include '*a number of apartments, terraced properties, including one-bedroom properties*'. To achieve this, in WTC's view, the density ought to be increased and ten dwellings ought to be included on the land to the South of the Site (not part of the application).
7. The Council's officer grapples with this as a planning response the OR. First, the Officer highlights that the appropriate density is not specified within Wiv 29. However, Wiv29 does state that 4.06 ha of the land is suitable for the erection of a minimum of 120 dwellings of mixed typologies. This equates to a minimum density of 30 dph for the residential land allocated on the site. The proposed development would have a residential density of 32.09 dph: a slight increase on the baseline density within the WNP.¹⁵ There is therefore no arguable policy conflict on the basis that the development is insufficiently dense: the appeal scheme provides more dph than would be included within the Town Council's own allocation. The criticism that the housing density is '*too low*' is therefore entirely unsustainable.

¹² Ibid.

¹³ CD1.1, §16.23 Officer Report says 2.81, however, 2.89ha shown on the constraints plan JF PoE, Appendix 9.

¹⁴ CD1.1 §9.1, Officer's Report

¹⁵ Residential area now 3.4ha in the SoCG and JF PoE Appendix 1. 120 dwellings over 3.74ha gives a gross density of 32.09

8. Second, not only was the density of the proposed development found to be acceptable, but the WTC alternative would result in a density of 42.7 dph – which would ‘*appear completely at odds with the surrounding contextual residential character*’. It would also be ‘*unfeasible*’ if the design requirements for residential use at the local and regional level were taken into account.¹⁶

The strip of land to the south

9. The development of the strip of land to the south is also mooted as potential solution to ‘*going north*’ by WTC. That land is subject to a dedication and is not developable without release from the dedication. It was included within the settlement area for the WNP, however, it does not form part of this planning application given the constraints on delivery. Notwithstanding the issues around its availability for development, the area would have been appropriate for approximately 10 dwellings only. Even if it were to come forward, it would not provide sufficient land to accommodate the approximate 30 dwellings north of the pylon (which are required to meet the minimum 120 dwellings). That would itself result in policy conflict. For that reason too, the Council was right to reject development to the south as a potential solution.

The degree of assessment of developable area within the WNP

10. As was fairly noted in the OR, the Appellants¹⁷ have reviewed the evidence base for the WNP and consider that there is a ‘*notable absence*’ of any evidence which explains why the residential area as shown in Fig 35 was selected to be to the south of the pylons. The Appellants will set out why that plan is an arbitrary one, which does not represent a physical boundary line. In addition, the extensive built area to the west which extends north of the pylons is relevant to that assessment, and is one which the Appellant’s will submit, is an important material consideration.
11. For these reasons, the Appellant will show why building to the north of the pylons is an eminently sensible planning response which has a sound evidential justification. The counterfactual (no build to the north) is arbitrary and lacks an evidential basis. For those reasons, there is a sound rationale for a minor departure from what the allocation says is appropriate. For these reasons, it was the professional officers of the Council’s view that, whilst

¹⁶ §16.25.

¹⁷ Referred to as the ‘applicants’ in the OR.

elements of the scheme that do not accord with the WNP, the scheme would accord with the Development Plan, taken as a whole.

12. Deviations from the WNP (the points now taken by the Council) were also noted as not being defensible reasons for refusal at an appeal by the Council's own officers. Members were also advised that the development would also secure the delivery of '*much needed*' houses (both market and affordable) as well as the plethora of social and environmental benefits that the scheme offers.¹⁸

Landscape impacts of the land north of the pylons

13. The focus of the landscape evidence is contained in the final sentence of the Reason for Refusal ("RfR"): "*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*".
14. Landscape harm was assessed during the application. The Landscape Officer found that: "*In conclusion; there are no objections to this application on landscape grounds in principle, this however is provided the above recommendation of further boundary treatment planting gapping up is/are secured via a bespoke condition*".¹⁹
15. The Inspector will be assisted by a summary of the effect on visual amenity and the impacts from a range of viewpoints by Ms Vanessa Ross. She will also give evidence on issues arising from the LVIA as well as the impact on the Landscape Character Area ("LCA") which falls within the District Level LCA B8 *Wivnehoe Farmland Plateau*. The LVIA assessment of value, susceptibility to change and sensitivity are all assessed as medium. Ms Westover, on behalf of the Council, agrees with this assessment²⁰.
16. The difference between the landscape experts is that the LVIA assessment of the magnitude of change is also medium which has a moderate effect. Ms Ross' assessment is that the nature of the effect will be adverse at year 1, becoming neutral at year 15 when the planting and open space have established.²¹ By contrast, Ms Westover appears not to have undertaken an

¹⁸ OR §17.5.

¹⁹ Landscape Officer 8.12 of Committee report

²⁰ §5.23 of AW PoE.

²¹ 1.17 of the LVIA, §5.19-5.20

assessment of the effects on the LCA (within the study area) and therefore the table does not accurately compare. In a situation where the effects of the Appeal Scheme are assessed (i.e. including 35 houses to the north of the power line, compared with only including the houses to the south), there is no material change to the effects on the LCA.

17. Ms Ross also finds that there is only a negligible change in effect on the Townscape Character Area of Vine Drive Post 1960s suburbs²² and on the adjacent council's Landscape Character Area²³ from a situation where there developing to the north of the power lines (compared with the Wiv 29 boundary).
18. As to the impact on the Wivenhoe Cross Local Wildlife Site ("LoWS"), there is disagreement as to what constitutes a valued landscape as per NPPF §76(a). Ms Ross concludes that the additional 35 houses to the north would have no additional impact on the LoWS. That is an eminently sensible conclusion to draw when the north would balance out the development to the south.

Other planning benefits

19. Aside from residential development, the remaining area is to be set aside for 2ha of sports pitches; the new open space will comprise some 9.28ha. That comes with a litany of added benefits covered in detail in the proof of Mr Firth.
20. In addition, the delivery of 120 new homes which will contribute towards the Council's housing targets, in line with the minimum requirements of Wiv 29, the delivery of 20% affordable housing which will make a substantial contribution towards the pressing need, a substantial quantum of public open space, landscaping, access to the LoWS, and tree planting, as well as Biodiversity Net Gain of some 35.88% are all materially important factors weighing in favour of the grant of permission.

Conclusion

21. For all of these reasons, it will duly be submitted that the proposed development complies with the statutory development plan, taken as a whole. Development proposals that accord with an

²² Townscape Character Type H1 Vine Drive Post 1960s Suburbs.

²³ See the Tendering District Council Landscape Character Assessment – LDCA 7A Bromley Heath.

up-to-date development plan should be approved without delay.²⁴ In due course, the Inspector will be invited to allow the appeal.

PETER GOATLEY KC

SIGNED DAVIES

No5 Chambers

²⁴ NPPF, §11(c)

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