

PLANNING APPEAL BY TAYLOR WIMPEY UK LTD

LAND AT BROADFIELDS, WIVENHOE, COLCHESTER

PINS REF. APP/A1530/W/22/3305697

LPA REF. 210965

CLOSING SUBMISSIONS ON BEHALF OF

COLCHESTER CITY COUNCIL (“CCC”)

INTRODUCTION

1. In light of both the evidence before the inquiry and the agreement of a s.106 agreement securing appropriate planning obligations, the main issues remain:
 - a. The principle of the development with respect to relevant planning policy; and
 - b. Landscape Impact.

THE PRINCIPLE OF DEVELOPMENT WITH RESPECT TO RELEVANT PLANNING POLICY

General

2. Pursuant to s.38(6) of the Planning & Compulsory Purchase Act 2004, the appeal is to be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework is important, providing national policy guidance and setting out the decision-making process. Para 15 of the Framework confirms that the planning system should be genuinely plan-led; that up-to-date plans should provide a positive vision for the future of each area; a framework for addressing housing needs; and a platform for local people to shape their surroundings. This is what CCC seeks to achieve through Colchester Local Plan Sections 1 and 2¹ (“**CLP1**” & “**CLP2**”) and Wivenhoe Neighbourhood Plan (“**WNP**” or “**the Plan**”)².
3. CLP1, CLP2 & WNP together comprise the development plan. CLP1 & CLP2 were adopted in February 2021 & July 2022, and WNP was made in 2019. All three are consistent with the Framework and not out of date³ (JF xx). Taylor Wimpey (“**TW**”) also agree that, for the purposes of the current appeal, the Council is able to demonstrate 5.25 years five year housing land supply (“**5YHLS**”)⁴. This confirms that the most important policies are not out-of-date. The consequences of these conclusions are that full weight attaches to the development plan (JF

¹ CDs 2.2 & 2.2

² See CD8.2 para 168

³ James Firth (“**JF**”) PoE para 7.7

⁴ SoCG para 5.24

xx), and that the planning merits are to be assessed on the “flat” balance⁵. JF’s acceptance that full weight attaches to the development plan does not sit well alongside efforts to undermine WNP Policy WIV29 (Land behind Broadfields) (“**WIV29**”).

4. *Peel Investments v. SSHCLG* [2020] EWCA Civ 1175 confirmed that events following their adoption – whether a change of policy or otherwise – may render most important policies out of date within para 11(d) of the Framework. TW’s position at this inquiry has reflected that the matters upon which they principally rely under “*other material considerations*” have not arisen following the making of WNP. Hence “full weight” attaches to relevant development plan policy. The issues raised are rather whether or the extent to which “constraints” were known about and considered in the plan-making process, and their effect.
5. CCC considers that CLP1 Policies SP1 (presumption in favour of sustainable development) & SP3 (spatial hierarchy); CLP2 Policies SG2 (housing delivery), ENV1 (Environment) Part E (Countryside) and SS16 (Wivenhoe); and WIV29 to be the six most important development plan policies⁶. Taylor Wimpey (“**TW**”) agree except in respect of Policy SP1 & SG2⁷.
6. Finally, CCC does not agree with TW that WIV29 out-ranks other policies in importance⁸. The Framework does not provide for or require identification of a policy that is first amongst equals, and requires instead that most important policies be considered as part of the *Wavendon* basket (JF xx). The effect of having done so, however, is that JF’s assessment has been unbalanced by failure to grapple fully with the consequences of breach of the settlement boundary (“**SB**”). Hence perhaps also the absence of reference to the SB from TW’s opening submissions.

Conflict with relevant policy

Failure to provide >120 dwellings on the allocation site

7. The spatial hierarchy within Colchester comprises three tiers⁹. Tier 2 includes sustainable settlements, where some growth is to be channelled recognising their key function beyond the urban area of Colchester; and Wivenhoe qualified automatically as one of these¹⁰.
8. SBs are an essential tool for the management of development and contribute to the achievement of sustainable development by preventing the encroachment of development into the countryside. They were drawn tightly to exclude areas that are more rural in character¹¹. WNP confirms that the settlement boundary marks the dividing line between the areas of built/urban development and countryside¹².

⁵ CD2.5 para 11; JF PoE paras 9.3. See also para 7.8

⁶ AH Rebuttal para 1.2

⁷ James Firth (“**JF**”) PoE para 7.32

⁸ Cf JF para 7.41

⁹ CD2.2 Policy SG1 & Table SG1 at pp. 16-17

¹⁰ CD2.2 paras 3.10 & 3.12

¹¹ CD2.2 para 3.11

¹² CD2.4 p.109

9. CLP2 Policy SG2 states that Table SG2 sets out the overall planned distribution of housing for the plan period 2012-2033. This shows allocations of 250 for Wivenhoe. Policy SG2 also states that details of the allocations are provided at Policies SS1-16, i.e. Policy SS16 in respect of Wivenhoe.
10. Policy SS16 reflects that WNP already sets out the development plan policy framework to support the allocation and delivery of 250 houses in Wivenhoe¹³, and adds two substantive policy components including:

“Proposals for development outside of the [SB] will not be supported unless the Neighbourhood Plan or other Local Plan policy specifically allows for it”.

The SB is shown on the Policy SS16 Policy Map¹⁴, and also on WNP Proposals Map & Fig.35¹⁵. It runs along the northern and eastern boundaries of the allocation site at WIV29.

11. WIV29¹⁶ allocates land for residential development in these terms:

“The land behind Broadfields shown in Figure 35 totalling 4.06 hectares is allocated for a minimum of 120 dwellings subject to the following conditions ...”.

12. The appeal proposal does not accord with WIV29 because it proposes 85 dwellings only on that area of land. Compliance with the conditions attached to WIV29 is not in issue, but does not diminish or substitute for failure to comply with WIV29 (JF xx), and the proposed development is therefore in clear conflict with WIV29.
13. It is CLP2 Policy SG2 that provides for the allocation of 250 dwellings at Wivenhoe, steering readers to Policy SS16 for the detail of those allocations. The proposal is in breach of Policy SG2 because it does not accord with the details of the allocation within the WNP to which Policy SS16 itself refers. CLP1 Policy SP3 provides the strategic policy framework or foundation for both CLP2 Policies SG1 & SS16, and the proposal is also consequently in breach of that policy also.

The proposal for 35 dwellings outside the settlement boundary

14. The proposal for 35 dwellings outside the SB is in further and quite separate breach of Policy SS16 – unless, that is, it is concluded that WNP or other Local Plan policy specifically allows for it (paragraph 10 above). JF did not endeavour to suggest that WNP contains any policy that allows for this part of the development (JF xx). JF’s contention that WNP allocation of land outside the SB for open space uses either paved the way for residential development (or mitigated the harm resulting from it) (JF rx) was surprising, and without substance.

¹³ CD2.2 para 6.234

¹⁴ CD2.3

¹⁵ CD2.4 pp.106 & 94

¹⁶ See CD2.4 at pp.94-96

15. Turning to other Local Plan policy, Policy ENV1 is about regulating the environmental effects of development, with Part E doing this in respect of development within the countryside. Part E does not allow, specifically or otherwise, that any form of development may take place in the countryside, i.e. it is not a Trojan horse. It provides instead expressly that the development whose effects it regulates should be in accordance with other relevant local plan policy.
16. This engages Policy OV2 (Countryside)¹⁷, which does make allowance for development in the countryside. The supporting text explains that Policy OV2 is restrictive so far as residential development in the countryside is concerned¹⁸. The wording of Policy OV2 itself, then, is also restrictive of the categories of residential development allowed in the countryside. The recent West Mersea appeal decision accurately reflects this¹⁹. Policy OV2 does not allow for the development of 35 dwellings in the countryside that are entirely unrelated to rural needs. The appeal proposal is therefore in breach of Policy ENV1. Whilst JF confirmed that he did not rely upon Policy OV2 (JF rx), there is no other policy within either CLP1 or CLP2 that might conceivably be viewed as making specific provision allowing for the proposed development. The appeal proposal is also in breach of Policy ENV1 Part E so far as its landscape and visual impacts are concerned, and this is considered under Landscape Impact below.

Development plan policy as a whole

17. The appeal proposal is, then, in breach of CLP1 Policy SP3, CLP2 Policies SG2, SS16 & ENV1 Part E, and WNP WIV29. JF does not identify clearly other – by definition, less important - development plan policies with which the appeal proposal is in accordance (eg concerning infrastructure provision or highways) and which might conceivably suggest that the proposal is nonetheless in accordance with the development plan taken as a whole. There was some suggestion that compliance with CLP1 Policies SP3 & CLP2 ENV1 assisted to bring the appeal proposal in accordance with the development plan as a whole (JF xx); but the proposal is actually in breach of those policies (see above).
18. Since the appeal proposal is not in accordance with the development plan as a whole, it is also in breach of CLP1 Policy SP1. This applies the presumption in favour of sustainable to development in accordance, not breach, of the development plan (see AH xx & rx). It leaves development that is not in accordance with the development plan to be determined in accordance with para 12 of the Framework (JF xx).

Harm

19. Granting planning permission for development that significantly under-delivers on the WIV29 allocation site and delivers significant development instead on land outside the SB and subject to countryside policy would serve to undermine the plan-led system, in which the communities

¹⁷ AH PoE paras 3.22-3.26

¹⁸ CD2.2 para 6.242

¹⁹ AH PoE App. 1 para 50

of Colchester as a whole and Wivenhoe in particular are heavily invested. These are very substantially harmful breaches in and of themselves. They result, moreover, from decisions on dwelling type and mix that result in further harm.

20. It is implicit within RR1 that development of the WIV29 site should secure delivery of >120 dwellings. WNP paras 17.33 & 17.40 explain that the combination of dwelling mix and density are envisaged to make best and most effective use of the allocation site and secure that delivery (JF xx). The supporting text to WIV29²⁰ directs the reader elsewhere within the Plan²¹ for an indication of the dwelling mix that WNP proposes across all four allocated sites. Conditions 1 & 2 attached to WIV19 provide very considerable flexibility so far as the size, mix and types of dwellings concerned, whilst limiting scope for provision of larger dwellings (JF xx). WIV29 plainly does this to enable WNP's largest allocation to contribute effectively to housing needs identified in the Plan.
21. TW's dwelling mix, by contrast, is entirely unexplained in evidence, and appears to represent instead a "tick box" exercise (AH eic). This mix fills out the outer edges of the envelope that conditions 1 & 2 provide: it provides the minimum small (1 or 2 bed) units (in terms of both number and size) alongside the maximum 4 bed units - all as semi-detached or detached houses with gardens & car parking (JF xx).
22. Choices made about the size and type of units provided have reduced the number of dwellings proposed for delivery on the WIV29 site. They have resulted in further planning harm by failure to take the opportunity that WIV29 provides to contribute effectively to the Plan's objectives etc in respect of the housing need identified.
23. To explain this further, (i) WNP sets out that Challenges include cost of housing for single persons or those of modest means²². (ii) The Plan's Vision includes better overall mix to meet needs of local people²³. (iii) Its Objectives include ensure residential development meets local community needs²⁴. (iv) WIV29 provides practically one half of the allocated dwelling capacity within Wivenhoe. Each of these four points emphasise the importance that the allocation site should both deliver >120 dwellings (JF xx), and that the dwellings provided should make effective contribution to meeting the needs identified in the Plan. JF does not dispute the housing needs analysis in WNP²⁵ or provide any alternative assessment (JF xx). He makes no reference, to the role that a variety of dwelling types & sizes might make to achievement of >120 dwellings on the allocation site and meeting housing needs arising in Wivenhoe.
24. To conclude, the appeal proposal is very substantially harmful, and further harmful, as explained at paragraph 19 above.

²⁰ CD2.4 para 17.40

²¹ CD2.4

²² CD2.4 para 6.2

²³ CD2.4 para. 7.1

²⁴ CD2.4 para 7.1

²⁵ CD2.4 paras 16.7-16.9 & 16.18-16.24

LANDSCAPE IMPACT

Preliminary point

25. A preliminary point arises in respect of the scope of RR1. This contains CCC's allegation that the appeal scheme will cause landscape harm particularly when the site is viewed from Elmstead Road. The evidence of Vanessa Ross ("VR") covered a range of receptors. She reflects correctly, with respect, that reference to "*particularly ... Elmstead Road*" is not exhaustive. It follows that viewpoints or locations from which the appeal scheme may be considered to cause landscape harm fall within the scope of RR1. Bearing in mind that VR herself identifies landscape harm in respect of POS1 (Y15) and VPs 4 & 6 (Y1), it follows that it is or should be agreed that the appeal scheme's impact upon the Local Wildlife Site ("**LoWS**") falls fairly and squarely within RR1. It would be unreasonable, in these circumstances, to consider that the proposal's impact on the LoWS did not fall within the scope of RR1.
26. Policy at para 174(a) of the Framework and within CLP2 Policy ENV1 Part E make particular provision in respect of Valued Landscape ("**VL**"). VR agreed (VR xx) that Anne Westover ("**AW**") provided evidence relevant to whether the LoWS is a VL having regard to Table 1 at TGN 02/21²⁶. It would be unreasonable, in these circumstances, not to consider whether the LoWS are, as a matter of planning judgment on the evidence, a LoWS in order to secure that the appropriate policy test is applied.
27. TW has also suggested that the effects of development within the setting of a VL do not fall for consideration within para 174(a). But the wording of the Framework contains nothing to support this limitation, and it is agreed that development within the setting of a VL may affect its character (AW xx; VR xx)

Background

28. WNP's Vision and Objectives²⁷ include: protection and enhancement of natural assets including its rural setting and areas important to wildlife and biodiversity; and protection of the rural setting of Wivenhoe. The entire appeal site is agreed to be part of rural setting for this purpose (VR xx).
29. WNP explains that: "*The site does extend development out into the countryside but is still considered to relate reasonably well to the existing settlement pattern. However, careful design and landscaping will be important, particularly on the eastern boundary*"²⁸. It is apparent from this and more generally that in allocating part of this agricultural landscape for residential development WNP accepted a range of landscape impacts and visual effects, some of which

²⁶ CD4.4

²⁷ CD2.4 p.21/21

²⁸ CD2.4 para 7.35

would be harmful²⁹. Allocation has already involved a degree of compromise (VR xx); but this is limited and has been achieved, importantly, via the development plan process.

30. Whereas WIV29 is “tucked in”, “not prominent” and has “easy access” (AH eic), the proposed northern residential area will extend further north into the countryside onto land allocated for open space and sports fields, be located more prominently, and have an urbanising effect upon the landscape setting of the northern part of Wivenhoe³⁰.

Impacts

31. The appeal site is situated within the Wivenhoe Farmland Plateau (“LCA B8”), and proximate to Bromley Heaths Landscape Character Area (“LCA 7A”) within Tendring. The appeal site excepting the LoWS comprises arable farmland consisting of medium to large arable irregular fields with – more or less - gappy field boundaries. It therefore shares a key characteristic of LCA B8 (VR xx³¹). It also features visually significant trees and woodland around its borders³². It reflects and is part of the predominantly arable farmland that encircles and provides the setting of Wivenhoe urban area. The relevant Landscape Strategy Objective for LCA B8 is to restore and enhance, and Landscape Planning Guidelines include conserve the landscape setting of Wivenhoe (VR xx³³).
32. AW & VR agree that the value, susceptibility to change and sensitivity of LCA B8 are all medium³⁴ (not low). They disagree, on the other hand, so far as magnitude of change is concerned and there is a resulting disagreement concerning effect and nature of effect³⁵. The Inspector is respectfully invited to prefer AW’s assessment of the effect of the appeal scheme in particular.
33. Development in accordance with the appeal scheme will result in reduction in the size of LCA B8, and its *de facto* incorporation within TCA H1 (VR eic)³⁶. The key point here, however, is that development north of the pylons takes residential development into a more exposed or prominent location within LCA B8. It will therefore not assist to restore or enhance the local landscape or conserve this part of the landscape setting of Wivenhoe (VR xx), and will be harmful to it instead. VR also agreed that the development will impact on the character of LCA 7A – albeit the consequences will be limited (VR eic).
34. RR1 alleges landscape harm particularly in respect of views from Elmstead Road. Existing views from Elmstead Road are of an attractive scene, whether viewed from the road or the north western part of the field. Whereas VR considered that views are of a featureless landscape, AW had particular regard to the boundary trees – a strong set of boundary features (AW eic & xx) -

²⁹ AW PoE para 7.1; AH PoE 4.49

³⁰ AW PoE para 7.1; AH PoE 3.28

³¹ By ref CD4.1 p.12/14

³² CD4.2C Fig 5.2 p.39/45

³³ By ref CD4.1 p.13

³⁴ CD5.5

³⁵ CD5.5

³⁶ CD1.17 p.26/62 para 5.17

in disagreeing with this and considering that the view was “stunning”. Reference to the Arboricultural report supports her appreciation of the trees, since all three boundaries feature groups of trees that form cohesive features, are in good form and high landscape value (VR xx³⁷).

35. VR confirmed her view, importantly, that the built form of a WIV29-compliant scheme would be “largely out of sight” from VP1 within the vicinity of Elmstead Road (VR xx³⁸). VR’s assessments of effect from RD3 and VPs 1 & 2 suggest that the impact of the appeal scheme will be beneficial, notwithstanding that the appeal proposal will result in view of built development from those viewpoints³⁹. Bearing in mind what the AVRs show about both (i) the loss of the trees along the LoWs boundary as part of the backdrop to views from Elmstead Road (see AW xx) and (ii) the limited screening effect of trees planted along the fringes of the proposed development at Year 15, the Inspector is respectfully invited, again, to prefer AW’s assessments (moderate adverse) from these viewpoints.
36. Turning to the LoWs, CCC considers that this has landscape value regardless of whether it is classified as VL. Indeed, VR identified the area of the Lows as receptor (POS01) regardless of its status VL or otherwise. The Framework does not define VL, and GLVIA3 and TGN 02/21 in particular provide the relevant guidance here. The latter was produced in response to the *Stroud* case⁴⁰ precisely to fill the gap in guidance that would otherwise remain. The factors that TGN 2/21 Table 1 identifies as relevant to identification of VL include Natural heritage, Landscape condition, Distinctiveness, Recreation & Perceptual (scenic) matters⁴¹. AW’s explanation that the LoWS is VL refers to matters that fall within each of these headings, and there has been no factual dispute concerning that part of her evidence. VR & AW agree, in fact, that the value of the LoWS as at VPs 4 & 6 is Medium/High⁴². VR rx concerning indicators within Table 1 was very selective.
37. The appeal proposal extends development a further 100m into countryside to the north along LoWS’s western boundary. There is agreement concurring the occurrence but dispute in respect of the duration and extent of landscape harm in respect of POS1 (Y15) and VPs 4 & 6 (Y1), but clearly also additional landscape harm resulting from breach of the SB. TW raised an issue about the legitimacy or significance of viewpoints from the LoWs bearing in mind that there has been no formal grant of public rights over the footpaths within it. But it is apparent from the fact that POS1 features in the LVIA⁴³ that Arc/VR consider, correctly, that these viewpoints should properly be considered. The appeal proposal will not protect or enhance the VL contrary to para 174(a) and that additional impact should also weight against the appeal proposal.

³⁷ By ref CB1.8 pp.25-27/50

³⁸ By ref PoE/para 6.24

³⁹ AW PoE para 6.19

⁴⁰ INSERT

⁴¹ CD4.4 p.11/51

⁴² CD5.5 Table 3

⁴³ CD1.17

38. Aside from these three receptors, AW assesses also the effects upon users of and visiting members of the public to the sports pitches to the north of the appeal site, Brightlingsea Road, PRow users, and residential receptors in the existing development to the west and along Brightlingsea Road, and these also add to the harmful landscape and visual effects of the development of land north of the pylons.
39. To conclude, the appeal proposal is not compatible with local landscape character, will fragment the local landscape setting, and be unsympathetic to landscape character and landscape setting contrary to CLP2 Policy ENV1 Part E and para 130 of the Framework. It would also not protect and enhance but have adverse impacts instead on the intrinsic character and factors which contribute to the value of the LoWS as a VL contrary to Policy ENV1 Part E and para 174(a) of the Framework.⁴⁴

DEVELOPMENT PLAN: CONCLUSION

40. Full weight attaches to the development plan. The appeal proposal is in breach of CLP1 Policies SP1 & SP3, CLP2 Policies SG2, ENV1 & SS16, and WNP WIV19, and not in accordance with the development plan as a whole. Granting permission would undermine the plan-led system, and result in approval of significant breaches of planning policy that would be very substantially harmful in and of themselves. This would also be harmful in terms of failure to take the opportunity that WIV29 presents to address the housing need identified in Wivenhoe. Finally, it would also have harmful effects on the landscape setting of Wivenhoe, and fail to protect and enhance a VL.

OTHER MATERIAL CONSIDERATIONS

41. The advice at para 12 of the Framework⁴⁵ is very clear. Planning permission should not usually be granted in the circumstances arising here. Authorities may take decisions to 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. This echoes the presumption in favour of the development plan.
42. TW contend that the appeal scheme provides planning benefit overall to indicate that planning permission should be granted contrary to the development plan. This is considered in the concluding section below. They also contend that they are not able or should not be required to provide >120 dwellings on the allocation site due to the effect of four “constraints” on the net developable area and resulting density of development.

⁴⁴ AW PoE paras 7.6-7.7; AH PoE 3.32-3.35

⁴⁵ CD2.5

Land ownership

43. The first of the matters relied upon is that issues concerning restrictions by deed on the southern part of the allocation site (requiring replacement open space provision⁴⁶) have meant that that land (0.3ha) did not meet “*the necessary title requirements of [TW]*”⁴⁷. TW has therefore not acquired part of the allocation site. It is surprising that any applicant for planning permission, let alone a national housebuilder, should consider that its failure to secure ownership of land allocated for development to provide, here (on TW’s evidence), 8-10 dwellings as part of a larger scheme should justify their development instead on land elsewhere outside the SB to which countryside protection policy applies. Bearing in mind that its incorporation will enable reconsideration of the scheme layout, it may be that development also of the FIT land will enable the inclusion of >10 additional dwellings (this land should not be viewed in isolation: AH xx).
44. This part of TW’s case does not involve a technical constraint (JF xx), and should be considered separately from that part of its “omc” case that does so. Aside from the difficulty of relying on its failure to acquire land in principle, this part of the case is conspicuously without merit.
45. The current owner of this land promoted its availability for development as part of a 15.37 ha site (WIV04) through the Local Plan process, where it was rated as available and achievable – confirming his assessment of it (JF xx)⁴⁸. The land concerned has at all material times and remains available for development subject to agreement concerning the provision of replacement open space (JF xx). TW’s proposals actually make open space provision in accordance with the deed of restriction⁴⁹. There is no evidence before the inquiry to suggest that FIT are unwilling to agree replacement provision and sale to TW (or that they have even been approached).
46. This is entirely a land assembly matter, with no evidence that there exists any, let alone insuperable, obstacle to resolution. Finally, AH referred to the FIT land remaining allocated and being potentially more difficult to develop were the current appeal to be allowed (AH eic).

Technical constraints

47. TW rely otherwise on pylons, mature trees and a drainage easement along the northern, eastern and western boundaries of the allocation site, and their effects as constraints. These features all existed when WNP was made and CLP2 adopted. They are all very clearly visible at any site inspection⁵⁰. They are all peripheral. Their effects in terms of the acceptability of residential development within a few metres of or over each them is well-known and - understood.

⁴⁶ See Deed of Dedication at AH PoE App 2 clause 4

⁴⁷ JF Rebuttal para 3.27

⁴⁸ CD3.3 pp.67 & 82/84

⁴⁹ AH PoE App 2 clause 4

⁵⁰ AH PoE 4.72

48. CCC does not accept that the existence and effect of these features did not inform the emerging WNP & CLP2. Indeed, Prof Black told the inquiry that the Town Council knew about and had regard to the pylons and trees; and Mr Caslin (TW's Planning Manager) agreed that the Town Council knew about these features. This evidence directly contradicts JF's references to a "change of knowledge" (JF rx). Furthermore, the Colchester SLAA refers to pylons as a potential constraint⁵¹ - and the pylon line here was itself selected to form part of the SB. The WNP SEA refers to mature trees along the site boundary⁵². This feature was also chosen to provide the settlement boundary – and referred to within WNP itself (paragraph 23 above).
49. This part of TW's case boils down to a complaint about documentation or the absence from it of detail. But there is no suggestion that the WNP SEA⁵³, does not set out its assessment of sites in a format or at a level of detail other or less than is to be reasonably expected. JF complains about an absence of detail in writing that is not required and is not routinely available (JF eic). The circumstances here are remote from those in the *Wem* case⁵⁴, and this decision did not feature strongly over the course of the inquiry.

Density of development

50. The effect of these constraints on the reasonably achievable density of development on the allocation site (or that part they own) lay at the heart of TW's "omc" case. In numerical terms, continuing references to densities of 40dph or more were not helpful. JF agreed that adding the Land outside TW's ownership (0.3527ha) to the Remaining Developable Area (2.9807ha) shown on his Appendix 9 results in a density, assuming 120 dwellings, of (say) 36 dph (3.3334/120)⁵⁵ – albeit subject to some adjustment (not calculated) in respect of the drainage easement and tree belt (JF xx).
51. However, TW's heavy reliance on density of development *per se* is fundamentally flawed.
52. First, WNP explains that: "*The site of 4 hectares is considered to be suitable to accommodate up to 120 dwellings. The types of homes should reflect the types of homes specified in paragraphs 16.25 to 16.31. This density and housing mix reflects a balanced approach that seeks to make the best and most effective use of land being brought forward for development whilst respecting the setting and general location of the site on the eastern edge of the settlement*" (underlining added)⁵⁶. It is the combination of dwelling mix and density that is envisaged to make the best and most effective use of the allocation site. It is clear also that the WNP SEA used "*Number of dwellings at at least 30 per acre*" as an indicator of the efficient use of land⁵⁷. TW's case fails entirely to consider the role that adoption of another dwelling mix - making provision for smaller dwellings – would doubtless make on the provision of increased dwelling numbers on WIV29.

⁵¹ CD3.3 pp. 13 & 15 (suitability & sustainability criteria)

⁵² WNP SEA at JF Rebuttal App 2 p.122

⁵³ WNP SEA at JF Rebuttal App 2

⁵⁴ JF PoE App. 6. See paras 14-18 & JF xx

⁵⁵ See ID2 para 34

⁵⁶ CD2.4 para 17.40

⁵⁷ CD2.7 p.38 & AH rx

53. Second, TW's emphasis on divergence from 30dph is itself exaggerated bearing in mind that the officer's report reflects WNP's approach to density matters, and refers to the density of 30dph as merely a baseline and 34dph as a nominal departure from 30dph⁵⁸. JF agreed that this was a nominal increase only (JF xx). A further increase to 36dph (or a little more) would likewise be entirely nominal.
54. Third (and most important), TW's case misunderstands or over-states the significance of densities. (i) The policies within WNP are presented in yellow boxes, and it is against these that planning applications are to be assessed⁵⁹. (ii) The supporting text explains the policies' full context. Putting this another way, density references in respect of WIV29 are, in JF's words, advisory - and not part of policy⁶⁰. (iii) The Examiner inserted reference to 120 being a minimum within WIV29 policy itself because she considered (a) that 120 should not be a cap, (b) schemes should be design-led, and (c) the land allocated should be used land both effectively and efficiently⁶¹. JF acknowledged and agreed with these three points (JF xx). Bearing in mind that >120 is a minimum, it follows that advisory density references are also to a minimum density.
55. Re-assessment of dwelling content to include more 1 and 2 bed units in a range of dwelling types inc. apartments & bungalows with reduced car parking provision would secure the effective and efficient use of WIV29. The option of providing >120 dwellings on the WIV29 allocation should be considered further before relocation of any of these dwellings in breach of development plan policy (AH xx). This requires a design-led, not density-led, analysis; and TW present no such evidence.
56. There is no issue between the principal parties concerning the acceptability in principle of 2.5 storey development or bungalows on the allocation site (VR xx⁶²). AW explained that 3 storey elements may be appropriate, whilst VR clarified that she did not agree⁶³. The prospect of making efficient use of the allocation site in accordance with para 124 of the Framework – whether by inclusion of 2.5 &/or 3 storey elements - should not, however, be foregone without consideration of how this might be achieved by design.

PLANNING BALANCE AND CONCLUSION

57. These submissions have already referred to: the very substantially harm that would result from the grant of planning permission in breach of the allocation and outside the SB of themselves; the further harm arising from failure to take advantage of WIV29 to address housing need identified in Wivenhoe; and harmful effects on the landscape setting of Wivenhoe including failure to protect and enhance a VL. These findings or matters weight heavily on the negative side of the planning balance.

⁵⁸ CD1.1 paras 16.14-15

⁵⁹ CD4.2 para 3.5

⁶⁰ JF Rebuttal para. 3.39

⁶¹ CD3.12 pp. 43 & 41

⁶² By ref CD1.80

⁶³ Clarification of VF PoE para 5.24

58. The provision of market and affordable housing weigh on the positive side. The first attracts moderate/significant weight, the second substantial weight. The provision of market housing does not attract more weight due to CCC's consistent record against the Housing Delivery Test measurement, its availability by means of a WIV29 compliant scheme, and the fact that the dwelling mix proposed is not tailored to meet housing need in Wivenhoe. CCC is able to demonstrate a 5YHLS, and the fact that its OAN is lower than its requirements would be in accordance with the standard methodology - if that were applicable at all - is neither more nor less than a reflection of why that method was introduced (to increase housing requirements). JF does not suggest, in any event, that the difference indicates that an earlier review of the Local Plan is required than that for which the Framework provides in any event provides (5 years).
59. The proposal's economic benefits attract moderate weight only since they would arise from a WIV29-compliant scheme for >120 dwellings⁶⁴.
60. The proposal provides sports pitches in line with WIV29, albeit re-located, and reduced open space overall than WNP envisages – since residential development beyond the SB has reduced the land available for open space north of the allocation site. Formal access to part of the LoWS is an additional benefit. CCC considers overall that moderate weight attaches to these benefits, and the LoWS element in particular, bearing in mind that that there is no suggestion that informal access is not in fact well-established⁶⁵. Neither does there appear to be any sound reason why bio-diversity net gain would or should be greater than for a WIV29 compliant scheme.
61. It has not been shown that any requirement exists for residential development either outside the allocation site or beyond the SB, and the planning balance is tilted firmly against the grant of permission. CCC therefore respectfully requests that this appeal be dismissed.

SIMON PICKLES
20 December 2022

Landmark Chambers
London EC4A 2HG

⁶⁴ AH Rebuttal para 1.20

⁶⁵ AH Rebuttal para 1.21