

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

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

**LAND AT BROADFIELDS, WIVENHOE, COLCHESTER**

---

**CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT**

---

Abbreviations

AW	Anne Westover	VR	Vanessa Ross	AH	Alison Hutchinson
JF	James Firth	SC	Samuel Caslin		

**Introduction**

1. As set out in our Opening Submissions, the Appellant, Taylor Wimpey UK Limited, seeks planning permission in respect of this appeal relating to Land at Broadfields, Wivenhoe, Colchester (“the Site”). We started this inquiry with two reasons for refusal (“RfR”) against the scheme.<sup>1</sup> Since then, the second reason for refusal has fallen away with the signed and executed planning obligation.<sup>2</sup>
2. There is now a focus on one reason (“RfR”) for refusing this development for the ‘*construction of residential development, access, landscaping, public open space, and*

---

<sup>1</sup> CD1.2, Decision Notice.

<sup>2</sup> Acknowledged by the Council in Opening. This deed has now been dated and submitted.

*associated infrastructure works*’ (“the Development”). That sole RfR focuses on the alleged non-compliance with the development plan’s overall spatial strategy (Policy SD1, H1, SP1, and SP3, SS16 and ENV1) and, of central importance to this Appeal, the Wivenhoe Neighbourhood Plan (“WNP”), specifically policy WIV 29 (and “the allocation”).

3. It is common ground that the majority of the Appeal Scheme sits within the zone of land allocated for housing in Wiv 29 (and within the wider Wiv 29 allocated area). The focus of the RfR is that 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*’.<sup>3</sup> In the RfR, it is said that building to the north of the power lines would be inconsistent with the adopted Local Plan policies and would not lend support to the proposed development due to the encroachment into land allocated in Wiv 29 for open space/ sports fields. The Council’s case is that this would undermine the WNP and would cause demonstrable landscape harm, particularly when the site is viewed from Elmstead Road.
4. In evaluating the scheme, however, what must be borne in mind is that it is only the part of the proposed development which extends beyond the residential zone boundary within the allocation with which the Council takes issue: 35 houses (of the 120) and the associated development north of the pylons.<sup>4</sup> This delivery of dwellings outside of the boundary of the residential zone is therefore the subject of an in-principle objection from the Council. But, as was fairly conceded by AH in XX (and which is now the Council’s case), the Site is subject to several constraints: a 6m no build zone around overhead cables, an eastern and north western easement, and a western drainage easement (all accepted by AH)<sup>5</sup>.
5. What logically follows (in circumstances where all else being acceptable, including open space and sports pitches’ location), is that the land available is a materially smaller parcel than was initially envisaged.<sup>6</sup> We are then left with two options: either the development becomes significantly more dense (than the 30dph envisaged in the

---

<sup>3</sup> See RfR1 on the Decision Notice.

<sup>4</sup> The SoCG CD 6.1 confirms that the location of the pitches and the open space are all agreed (para 7.10).

<sup>5</sup> Despite JF being questioned on the constraints in his XX.

<sup>6</sup> 2.89 ha developable rather than the 4.06ha in Wiv 29

WNP) or the Site breaches the residential area recorded in the Wiv 29 allocation. It was that very question with which the Case Officer grappled. The same is recorded in a detailed and comprehensive Officers Report.<sup>7</sup> The Officer came to the view that just over a quarter of the dwellings being outside the development boundary was an acceptable compromise<sup>8</sup>. These closing submissions will focus on why that was the right conclusion to draw.

6. In bringing together the Appellant's case in these Closing Submissions we will first focus on (1) the developable area, and why it differs from what is set out in Fig 35 (of Wiv 29); and (2) the resulting consequences, if any, on the landscape from building '*north of the pylons*'. Thereafter, we will briefly deal with matters raised by the Wivenhoe Town Council ("WTC") and third parties, why the scheme is policy compliant, and why the planning balance falls squarely in favour of allowing the appeal and granting permission for the proposed development.

#### **The constraints on the Site.**

7. The area of the Appeal Site with built development (including the area north of the pylons) extends to just 3.74ha<sup>9</sup>: less than a quarter of the overall site (15ha) and less than the 4.06ha identified in the Wiv 29 policy.<sup>10</sup>
8. What Wiv 29 requires is contained in Fig 35 of the WNP. That clearly sets out a broad schematic which includes not only residential development in the south of the allocation, but new sports pitches on the 'L' corner of the allocation with further open space beyond, to the north of the Site.<sup>11</sup> The Appeal Scheme differs by shifting the residential slightly northward, extending some 35 houses north of the pylons, with sports pitches and the open space beyond.
9. Of material relevance is the fact that Wiv 29 requires that a minimum of 120 dwelling be provided on the Site (of 250 to be provided in Wivenhoe as recorded in the WNP

---

<sup>7</sup> CD1.1

<sup>8</sup> CD1.1, including paragraphs 17.5 and 17.6

<sup>9</sup> See JF Appendix 1

<sup>10</sup> Fig 35.

<sup>11</sup> See Fig 35.

and Policy SS16<sup>12</sup>). There are several key points to make about the delivery of the number of dwellings on the 4.06 ha allocated in the WNP.

10. First, the Site has several constraints. These are mapped on JF PoE Appendix 9.<sup>13</sup> These include overhead cables and ‘*no build*’ zone, an eastern and northwestern corner easement, a western drainage easement, as well as 0.35 ha outside of the Appellant’s ownership, and which is subject to a deed of dedication in favour of Fields in Trust (“FIT”). There are also drainage conditions which necessitate a balancing pond on the housing land on the southern boundary (and would not have been known to WNP). As noted above, the existence of all of these constraints is now acknowledged by the Council (AH XX).
11. What is said against the proposed development is that these constraints are ‘*nothing new*’; that the WTC (and authors of the WNP) had knowledge of these constraints when delineating the Site allocation. The conclusion is then drawn that the WNP working party must have known that the implications that the constraints had for development on the Site.
12. Whilst some of the site constraints may (or may not) have been visually discernible, it simply does not follow that the constraints were considered in the same way that they have been during the lifetime of the application. Though no criticism is intended, there were no hearings scrutinising the neighbourhood plan.<sup>14</sup> The site was promoted by the landowner, rather than Taylor Wimpey, as a housebuilder. In addition, and as was fairly stated by TW representative Mr Caslin, the Appellant has every desire to build on a Site as free of constraints as is possible.<sup>15</sup>
13. It is only during the course of the application that the issues on developing the full 4.06ha area have been properly interrogated and appreciated. There is no documentation that the Examiner of the Neighbourhood plan grappled with that issue in respect of its impact on the ‘*developable area*’. It simply cannot be the case that the constraints’ impact on the developable area could have been known to the extent that

---

<sup>12</sup> CD 2.2 page 158/244

<sup>13</sup> CD7.2, page 92.

<sup>14</sup> And the same has been confirmed in the Examiners Report in this case.

<sup>15</sup> WTC RT Session

they are now. What is said is that the constraints are not ‘*out of the ordinary*’ and that they ought to be dealt with.<sup>16</sup> We take each of these in turn.

14. First, we turn to the land at the south of the allocation, but outside of the appeal site. This is land that is currently subject to a deed of dedication in favour of Fields in Trust (“the FIT land”). The Council’s opening statement dismissed the fact that this land had not come forward as part of the application as ‘*merely*’ being a ‘*land assembly matter*’. This was a constraint that was only raised by TW following a legal analysis of the land (and which was not obvious on a simple review of title of the land, available at the WNP stage). Whilst that is not a technical constraint,<sup>17</sup> it is a real constraint on delivery of housing on the Site. The land is in different freehold ownership; the appellants do not own the land. Even if the land was owned by the Appellant, then FIT retains the ‘*absolute*’ discretion on the release of the land<sup>18</sup>. This cannot therefore be dismissed out of hand; there are material constraints associated with the dedication, which, whilst not insurmountable, mean that the Site is not available for development now, and may not be in the future either. Indeed, had this been ‘*eminently resolvable*’ it can be assumed that the landowner might have sought to undertake negotiations for release already.
15. Second, pylons sit to the north of the residential portion of the allocation area. These require a 6m stand-off distance. That is recognised in national guidance.<sup>19</sup> Whilst the authors of the WNP were clearly aware of the pylons (as they utilised them to form the settlement boundary), during the course of the appeal, it has become evident that these were not the subject of any appropriate scrutiny when the WNP was drafted. AH recognised the constraint that, where there are overhead cables, then there are limitations on where you can build in relation to them.<sup>20</sup> Had the WNP taken account of those cables, then the northern boundary of the allocation would have been drawn at the southern extent of this no build zone, rather than to the central cable.

---

<sup>16</sup> AH Evidence

<sup>17</sup> Accepted by JF in XX.

<sup>18</sup> AH Appendix 2, Clause 4 of Deed dated 21<sup>st</sup> February 2013

<sup>19</sup> JF EiC

<sup>20</sup> AH XX.

16. Third, the water drainage easement also requires that there is no built development on a swathe of the west of the Site. That was something that AH had seen variously shown on maps and she also did not dispute its existence.<sup>21</sup> This has had an impact on the drainage strategy and the associated impact on land take.
17. Finally, the SEA accompanying the WNP<sup>22</sup> does acknowledge that the Wiv 29 allocation is bordered by some mature trees.<sup>23</sup> However, subsequent to the process for the production of the WNP, the application has now been subject to an initial arboriculture assessment.<sup>24</sup> The root protection areas referable to those identified and plotted trees mean that there is no built development that can go within them. This will also be subject to further detailed assessment later in the process.
18. The substance of that analysis was not challenged by AH(xx). As a result, this undoubtedly reduces the developable area. It was against that context, that AH fairly and rightly conceded that '*something had to give*' - either density or the development boundary.<sup>25</sup>
19. It is only in the context of the application that the different uses have been properly considered, and, only in this context have the planning decision makers grappled with whether or not they give rise to harm, having regard to a full explanation of the constraints. Whilst many things have not changed on Site – the pylons, the easements, the trees – the technical implications of how they impact development were only fully understood during the course of this application. The resulting impact on the scheme, combined with the identification of new technical constraints (for example, the drainage easement corridor) mean that only now is there a full enough understanding of the land which is developable.

*The residential density issue*

20. In order to provide for a minimum of 120 dwellings, it has been suggested that the Appeal Site should be more densely developed. The starting position is that the WNP

---

<sup>21</sup> AH XX.

<sup>22</sup> CD2.7

<sup>23</sup> CD2.7, page 12.

<sup>24</sup> CD1.8

<sup>25</sup> AH XX.

plainly envisaged 30dph as appropriate.<sup>26</sup> This was also recorded in the Strategic Environmental Assessment (“SEA”)<sup>27</sup> where such a density was noted as having a significant positive effect.<sup>28</sup> A denser form of development has therefore not been assessed within the context of the allocation.

21. Building within the parameters of the developable area of the allocation (2.98ha), whilst maintaining a minimum of 120 dwellings, would mean a density of over 40dph.<sup>29</sup> The appeal scheme would be 32.09dph. When asked if there were any developments at over 40dph in Wivenhoe, AH explained that she had not engaged in such an assessment. She accepted too that the Officers had considered the prospect of exceeding 40dph on the Site, and in so doing, the Council’s officers had considered that the 42.7dph would appear ‘*completely at odds with the surrounding contextual residential character*’<sup>30</sup>. It would also appear to be ‘*even more unfeasible if the necessary design requirements for residential use and the local and regional level were taken into account*’. The upshot of developing within the boundary at such density would be that the development would be more ‘*cramped*’ and ‘*far less landscape led than the current proposal*’.<sup>31</sup>

22. For that reason, the Council’s Officers, like the Appellants considered that ‘*going north*’ of the pylons was acceptable. They found that increasing the density would, by contrast result in a cramped form of development wholly out of keeping with the rural feel of the edge of settlement location<sup>32</sup>. To the extent that 2.5 storey buildings are now suggested as a potential solution, these would be at odds with the surrounding built form (where there are no properties in excess of 2 storeys in the neighbouring estate).<sup>33</sup> As JF explained (XC and XX) they were, as a consequence, removed by TW from the scheme.

---

<sup>26</sup> As it considered the allocation to be 4.06 for 120 dwellings. That is approximately 30dph. The same is recorded in the supporting text. See §7.33.

<sup>27</sup> CD2.7, WNP SEA Environmental Report. See pages 38 (Table 5), Table 7 (p44), page 119 (Table 41), page 130 (Table 43), 14.6.4 (p135: “++” for Wiv29 proposed density).

<sup>28</sup> Densities of less than 20 per hectare was noted as being a significant negative effect, with the housing development of 20-29 per hectare noted as being an uncertain or neutral in effect.

<sup>29</sup> Accepted by AH in XX.

<sup>30</sup> See §16.25 Officers Report (CD1.1)

<sup>31</sup> See §16.25 Officers Report (CD1.1)

<sup>32</sup> §16.26 of the Officer’s Report CD1.1

<sup>33</sup> JF EiC.

23. The only issue left to consider then is whether the development is acceptable in landscape terms.<sup>34</sup>

### **The landscape impacts**

24. In considering landscape impacts, it is helpful to start by noting what is agreed between the landscape experts, Ms Westover for the Council (“AW”) and Ms Ross for the Appellant (“VR”). Those issues are helpfully distilled in the Landscape SoCG.

- a. The Site is located to the northeast edge of Wivenhoe.<sup>35</sup>
- b. The Site is bordered by residential areas, sports ground, a local wildlife site and countryside including agricultural land, former gravel workings.<sup>36</sup>
- c. There is no statutory landscape designation on or adjacent to the Appeal Site.<sup>37</sup>

25. It is for that reason that the Appeal Site is a sensible place for residential development, and why the majority of the Appeal Site forms the largest allocation in the WNP. Despite what is said against the scheme, the majority of the residential development sits within the residential zone of the allocation of the Wiv 29. Accordingly, it is clear that the focus of the ‘*landscape*’ objection is not to the wider allocation; it is restricted exclusively to the 35 houses north of the power lines.

26. Before moving on to consider the details of the landscape effect, it is also worth highlighting that the pylons cannot now be arbitrarily identified as a natural settlement boundary, particularly given that the existing estate to the west has already developed.

### *The material upon which landscape and visual impacts are assessed*

27. The Appeal Scheme was supported by a landscape and visual impact assessment (“LVIA”). This was to the satisfaction of the Council at the application stage. AW confirmed that she was in agreement with the methodology,<sup>38</sup> and that the AVRs were

---

<sup>34</sup> §16.26 of the Officer’s Report CD1.1

<sup>35</sup> CD6.2 §2.2, Landscape SoCG.

<sup>36</sup> CD6.2 §2.2, Landscape SoCG.

<sup>37</sup> CD6.2 §2.3, Landscape SoCG.

<sup>38</sup> AW XX.



correct<sup>39</sup>. So too did she agree that we were not dealing with the ‘*total loss or major alteration of the make-up of the landscape*’.<sup>40</sup>

28. Ultimately, whilst the Appeal Site is in a countryside location, it is on the periphery of an existing settlement, it is a landscape already influenced by urban features.<sup>41</sup> There is residential development to the West and the football club to the East: the landscape character it itself affected by adjacent development.<sup>42</sup>

### *The LCA and TCA*

29. We heard about how the Appeal Site lies within the Landscape Character Area (“LCA”) B8, Wivenhoe Farmland Plateau and that the immediately adjacent residential development (within the envelope of Wivenhoe) sits within the Townscape Character Assessment H1 (“TCA”), Vine Drive and Post 1960’s Suburbs<sup>43</sup>, albeit that Broadfields does not feature within the TCA’s key features.

30. The high point of the LPA’s case is whether or not there is an unacceptable landscape harm on the LCA. The LCA will necessarily be affected by any development within the LCA which effects a change upon it. It is acknowledged that the Appeal Scheme will therefore have a ‘*direct impact*’ on the character area.<sup>44</sup> But, that must be considered in an area where there have been impacts from the adjacent settlement edge in any event.

31. What is striking is that neither the published character assessment, nor the WNP include any viewpoints that look to or from the site. As VR identified in evidence, the only views identified within either published character assessment or the WNP do not concern the Site.

32. With regard the visual effects of the scheme, those have been comprehensively addressed within the LVIA, and whilst there is some disagreement about the magnitude of the effects, Inspectors are rarely assisted by a minute dissection of each change.

---

<sup>39</sup> CD7.6 Accurate Visual Representations Winter vs Autumn.

<sup>40</sup> AW XX.

<sup>41</sup> AW XX.

<sup>42</sup> AW XX.

<sup>43</sup> CD6.2, Landscape SoCG, §4.6

<sup>44</sup> VR EiC.

Notwithstanding, VR explained the key differences between the approach that she and AW had taken<sup>45</sup>. AW has assessed the impact of the sports facilities as separate to the residential area. By contrast, VR considers that, in her assessment, the sports provision and open space had to be assessed together with the residential area under Wiv 29. There should be no separate assessment as the sports provision is contingent upon the residential development coming forward<sup>46</sup> and the Appellant is required to provide the same if permission is granted. In addition, AW had looked at the impacts from Brightlingsea Road. That is on the periphery of the LCA. That is a road where people are going to be travelling at pace. Moreover, those receptors would see built form in any event. That serves to prove how tenuous the Council's position really is.

33. Understandably, the LVIA did not assess the Wiv 29 scheme – the task was to assess the application scheme.<sup>47</sup> The WNP did not undertake a local landscape/townscape assessment of the Wiv 29 allocation area (or its boundaries) in the evidence base either.
34. Whilst there is a physical difference between the Appeal Scheme and the residential zone of the allocation, based on the viewpoints that have been prepared, that difference would only be in relation to Viewpoints 1 and 2. There would be a view from Elmstead Road, however, there would be an ability to see the new development from either the appeal scheme or Wiv 29 scheme from Viewpoint 2 and only a small increase in built form from Viewpoint 1. Both views take in existing houses. In other words, there is no material difference in landscape terms.
35. Regarding the Accurate Visual Representations<sup>48</sup> these are there to establish what would be seen from the principal vantage points. The viewpoints were all agreed. Only viewpoints 1 and 2 are taken from near Elmstead Road (though they are from within the vicinity of the proposed footpath/cycleway, within the proposed open space and not from the road). In summary, VR's evidence was that:
  - a. From **Viewpoint 1**, the pylons are shown in the far distance. The trees are then shown on the boundary of the site on the horizon. What is notable is that the boundaries of the dwellings at Broadfields are visible. Moreover,

---

<sup>45</sup> CD 5.5 SoCG

<sup>46</sup> VR EiC

<sup>47</sup> VR EiC

<sup>48</sup> CD7.6

the AVR1 type 4 shows merely a small amount of additional built form with the development. Once the proposed hedgerow has grown, the housing will be imperceptible from Elmstead Road. In VR's evidence, that is the only place where the appeal scheme would be visible over and above the allocation site.

- b. From **Viewpoint 2**, it is clear that trees appear around the boundary, including in the distance. Whilst the introduction of housing will obscure a small proportion of those trees, the views will take in the new trees in front which will recreate the former historic hedge boundary. This helps assimilate the development into the landscape. The main part of the view from that location, is the transformation of the agricultural field to a sports field. However, these would be largely viewed from the road, and, in such a case, there would be some '*intermittent glimpses*' of the new houses, '*if you were looking*'.<sup>49 50</sup>
- c. From **Viewpoint 4**, the pylons are evident in the centre of the view. Whilst the proposed houses will be seen beyond, they are not a prominent feature.
- d. Again, the Appeal Site from **Viewpoint 5**, was seen in the slightly faded light at the site visit. These are views where the views are filtered by the existing mature trees that run along the Site boundary, and along the eastern boundary of the LoWS. The existing houses can be seen in the distance, though heavily filtered from vegetation on the western boundary of the Site and larger trees in the view. Whilst the magnitude of change would be moderate, the LVIA noted that due to the limited change and distance away, that the effects would be reduce to minor and, in summer months, the nature of the effects on the view and the visual amenity would be neutral. Moreover, it is unlikely that there would be a perceptible difference between the visibility of the appeal scheme and a housing development that followed the Wiv 29 Policy boundary.<sup>51</sup>

---

<sup>49</sup> VR EIC.

<sup>50</sup> Viewpoint 3 was produced at the request of the council. However, it was agreed that the development would not be seen from this viewpoint.

<sup>51</sup> §6.8 of PoE VR.

36. AW provided the inquiry with a series of photographs. These were included at her Appendix A. VR critically evaluated these:

- a. **Sheet 1, Photograph 1** was taken from an area where there was no public access. VR explained that this was contrary to established best-practice where photographs ought to be taken from publicly accessible viewpoints or where people would normally be located – for example, from a park bench, or from a bus stop.<sup>52</sup> Whilst they may set the scene, they do little more than that.
- b. **Sheet 1, Photograph 2** was used by AW to explain the potential for visibility of houses to the north of the pylons and if the photograph had been taken further to the south, then the development would clearly be visible, as would the Wiv 29 allocation and the existing houses. As VR explained, that was the area along which the inquiry site visit was taken. VR did not consider this to be a public viewpoint either.
- c. **Sheet 1, Photographs 3 and 4** were taken proximate to where the proposed footpath and cycleway would enter the Site. The details of that would be addressed by condition. These are therefore not concerned with landscape and visual impact matters. Again, these were provided *‘for context’*.
- d. **Sheet 2** of the photographs deals with the Site from within the LoWS and they are representative of the experience that one might get if one was looking from within the Site.
- e. **Sheet 3** again, these were characterised as providing context, but these are matters which are to be dealt with by condition. These are about improving connection, which is one of the aims of the WNP.

37. It is respectfully submitted that the agreed AVRs provide the best visual representation of greatest utility to the Inspector. They demonstrate that, beyond the land which was allocated, there is little greater effect from the additional dwellings. For these reasons, the Inspector is invited to conclude that the proposed development would not give rise to an unacceptable landscape impact.

---

<sup>52</sup> VR EiC.

38. For completeness, Townscape Character Area H1, shows how the Broadfields estate (adjacent) is from the post 1960s era. This is an important distinction with the more historic centre of Wivenhoe.<sup>53</sup> Whilst there would be a difference in the age of the building, the form, the size, and the height are comparable.<sup>54</sup> Note also the CBA assessment for Area 17<sup>55</sup> which showed “low” for landscape value and sensitivity and visual characteristics.

### *Valued landscape*

39. From the Council’s SoC<sup>56</sup> was first raised the contention that the LoWS represented a “*valued landscape*”, the existence of which would have some bearing upon the consideration of the appeal proposal. It may be noted that this never formed part of the Council’s decision notice refusing permission<sup>57</sup> and its inclusion had never been authorised by any resolution by or on behalf of the Council.<sup>58</sup> With respect, this is a freestanding objection of AH and AW and is neither supportable nor justified. Further, it remains simply unclear as to what, if anything, is its consequence. Whether it is Wiv 29 or the Appeal scheme, it is clear that the LoWS will be in proximity to new residential development. As a matter of principle, this point leads nowhere. VR’s assessment is that the LoWS it is not a ‘*valued landscape*’ within the meaning of NPPF §174<sup>59</sup> (but the impact upon it of development within the appeal site will not materially affect it). It may be noted that the setting of a valued landscape – it is accepted that there is no direct impact of the proposed development on the LoWS<sup>60</sup> - is not something that is protected by national policy in the NPPF<sup>61</sup>.

40. VR highlighted that the only identified landscape that could be a ‘*valued landscape*’ would be the Colne Valley.<sup>62</sup> VR was of the view that a ‘*valued landscape assessment*’ was not strictly necessary given that it was not, in her view, a valued landscape, and

---

<sup>53</sup> VR EiC

<sup>54</sup> VR EiC.

<sup>55</sup> CD 4.2B (pp53/140 -56/140) and CD4.2C (pp39/45 and 41/45).

<sup>56</sup> CD6.3, para 5.18

<sup>57</sup> AH XX

<sup>58</sup> AH XX.

<sup>59</sup> CD6.2 §6.5, Landscape SoCG

<sup>60</sup> AH XX

<sup>61</sup> AH XX

<sup>62</sup> VR XX.

the same issue had never been raised by the LPA, who had considered (and had asked for revisions) of the LVIA. Whilst she had not done a separate ‘valued landscape’ assessment, VR had assessed the area, including the LoWS, within landscape character area B8.

41. In short, nothing of materiality turns on this point.

### **Planning benefits**

42. It is common ground for the purpose of the appeal that there is a 5YHLS of housing land. The Appellant’s case is that the proposal is one that accords with the development plan, read as a whole<sup>63</sup>. However, even if a different view were to be taken upon this (having regard to the very limited divergences with the terms of Wiv29) material considerations indicate that planning permission should be granted. In that instance, and to the extent relevant, this would give rise to the application of a ‘flat’ planning balance.

43. It is important to bear in mind that the total area of residential development is less than the area that the WNP allocated. As has been noted, 2 ha is set aside for sports pitches, and 9.28 ha of land will form the new open space.<sup>64</sup> 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 publicly available, for the first time, by the development.

44. We turn to the provision of **market housing**. Here, the 5-year housing land supply position is agreed to be just over 5 years at 5.25 years.<sup>65</sup> However, both AH and JF note that the Tiptree decision is more recent than the SoCG and finds that the supply is 5.06 years. In any case, a five-year supply is a minimum level of housing provision. This development forms an important part of the development plan supply (120 of the 250 in Wivenhoe) and in Colchester more generally.<sup>66</sup>

---

<sup>63</sup> The same approach taken by the Council’s Officers – see CD1.1

<sup>64</sup> And the same is not recorded in the RfR

<sup>65</sup> SoCG

<sup>66</sup> See table SG2 in CD2.2 of the CBC Local Plan, Section 2. Page 24.

45. It may be noted that the Inspector in the Tiptree appeal<sup>67</sup> was minded to give ‘*significant weight*’ to the delivery of market housing. Here, AH was minded only to give moderate weight to market housing. To support that contention that the weight ought to be reduced to ‘*moderate*’ weight, the Council seeks to draw support from the fact that the circumstances are materially different: that the difference in the purported 5YHLS position was 5.06 years in Tiptree and 5.25 years here<sup>68</sup>. The contention that such a difference is materially different is untenable. First, because this is an application which forms part of the ‘*planned*’ supply (unlike the Tiptree appeal, which related to a purely windfall development), and second, because difference between 5.06 and 5.25 is not material in any event. The Inspector is duly invited to agree with the Inspector in the Tiptree appeal, and grant ‘*significant weight*’ to the benefits associated with market housing in this Appeal.
46. The planning witnesses were in agreement that significant/substantial weight ought to be afforded to **Affordable housing**. That is a conclusion with which we invite the Inspector to agree, most importantly because there appears to be no provision for affordable housing coming forward in Wivenhoe in the 5YHLS.<sup>69</sup> This Site would therefore make an important contribution to meeting that deficit.
47. In terms of the **social and environmental benefits**, whilst the policy requires connectivity, it is important to note that such benefits are only realised if the development comes forward. The extent of open space secured through these proposals is very significant indeed. Much of the Site remains undeveloped. As VR highlighted, provisions such as the sports pitches, and open space which are currently not lawfully available to members of the public is a benefit that is only secured with the development. Similarly, the access to the LoWS is an added benefit, as well as the management of that area for the longer term. Biodiversity Net Gain is also substantial on this site: some 35.88%. That is considerably above the level of 10% Net gain stipulated in policy.<sup>70</sup> For completeness, the footpath which will be secured through

---

<sup>67</sup> CD8.2

<sup>68</sup> §5.24 years in the SoCG

<sup>69</sup> JF EIC.

<sup>70</sup> NPPF’s requirement of ‘net gains’ and the 10% requirement set out in the Environment Act and due to be brought into force by further regulations

the FIT land, which the Appellant now has now demonstrated can be provided, is secured by condition.<sup>71</sup>

48. The **economic benefits** should also be given significant weight. These are also enumerated at JF App 16. These benefits were not subject to challenge and given the lack of other schemes delivering such a benefit, this should also be afforded significant weight.
49. Whilst opponents to the scheme may say that these benefits of the scheme would come forward with a '*policy compliant*' scheme, there is no guarantee that the site will come forward at all, and not in a '*policy compliant*' way. As set out above, there are also a litany of additional benefits that exceed those set out in policy. These (including public access to the LoWS) would only be realised through this scheme.
50. Finally, the Council refer to the Tiptree decision to support the contention that the Appeal ought to be dismissed in circumstances where development is outside of settlement boundaries. That contention falls to be rejected. That decision relates to a site whose circumstances are materially different. In the case of the Appeal Site, the majority of the residential development is within the settlement boundary. Second, and allied to that point, the minimum of 120 dwellings, is an important contribution to the delivery of houses the CLP. The same cannot be said of Tiptree - which was an exclusively windfall site.<sup>72</sup>

### **Compliance with policy**

51. It is important to note that decisions need to have regard to the development plan as a whole (and not focus overly narrowly – as the Council has in this case – on a single part of Wiv29).
52. Regarding compliance with policy **SG1**,<sup>73</sup> JF indicated that the policy was directing a decision maker to follow the spatial hierarchy for housing, focusing on Colchester, and then sustainable settlements, of which Wivenhoe is one. This proposal is very much in

---

<sup>71</sup> JF EiC.

<sup>72</sup> JF EiC

<sup>73</sup> CD2.2



line with the spatial strategy, unlike other cases referred to by the Council in Tiptree and West Mersea.

53. Policy **SG2** comprises the allocations, and Wiv 29 makes up 120 of the 250 dwelling that make up that policy.<sup>74</sup> In short, it makes an important contribution towards the overall allocations of housing in the plan.
54. **SS16** is the policy that deals with Wivenhoe. It references the WNP. It identifies the settlement boundary and that development proposals will not be allowed unless it is within the settlement boundary. Whilst the scheme goes beyond the form identified within the WNP at Fig 35, in part, JF Fig 1 recognises that the disposition of the uses is different between the appeal and the allocation, and the reasons for that are extensively covered above.<sup>75</sup>
55. The Council's position is yet more tenuous when the sports pitches are agreed to be acceptable in the north of the appeal site (close to the football club)<sup>76</sup>. Having looked at the documentation in the WNP, JF confirmed that the technical constraints had not been considered adequately.<sup>77</sup> AH sought to dismiss this out of hand – that every site has different constraints. JF acknowledged that, but the practical reality is that these provide technical constraints on what can be achieved.<sup>78</sup>
56. The denser/higher built form would not be in-keeping, (and would be out of step with) the landscape-led nature of the scheme, and not in accordance with policy. This too would conflict with the design and amenity requirements of **DM15**<sup>79</sup> which requires that schemes respect and enhance the quality of the Site. JF confirmed that discussions with officers had confirmed that significant work was done regarding the design and layout; higher density development was not supported given the concerns around design. Such concerns are also recorded in the OR<sup>80</sup>.

---

<sup>74</sup> Page 24 of 244 of CD2.2

<sup>75</sup> JF EiC

<sup>76</sup> SoCG.

<sup>77</sup> JF EiC .

<sup>78</sup> JF EiC.

<sup>79</sup> CD2.2, page 201.

<sup>80</sup> CD1.1 see §16.26 as an example of that.

57. Policy **SP1**<sup>81</sup> is a presumption in favour of sustainable development. This, to a certain extent, incorporates both the statutory test and national policy into the DP. It requires decision makers to take account of material considerations, as part of policy. Material considerations (such as the technical constraints) are therefore baked into the development plan and there is thereby conformity with it.
58. Policy **ENV 1** does require the careful balancing of new development in the countryside. This does not set a prohibition on development; it makes it subject to criteria. AH agreed that the local planning authority do not take issue with any part of that policy other than (E). That states that the local planning authority will carefully balance the requirement for new development ‘*within the countryside*’. AH also fairly conceded that we were only really concerned with the impact on the ‘*intrinsic character and beauty of the countryside*’ (rather than on being ‘*within valued landscapes*’ where no development is proposed<sup>82</sup>). With all due respect, the harm arising from ‘*conflict*’ with this policy from 35 dwellings cannot be the subject of significant criticism, particularly when we are dealing with a site which is on a settlement edge, very clearly subject to the more urban influences of Broadfields and beyond.
59. Taking the totality of the ‘*basket*’ of policies, the Appeal Scheme is in accordance with the development plan as a whole. The minor deviations from the schematic in Fig 35 are well evidenced, and well justified.

### **The Town Council’s position**

#### *The potential ‘alternative’ scheme*

60. Much seemed to be said by Wivenhoe Town Council (“WTC”) of an “*alternative scheme*” which is not formally before this inquiry. JF Appendix 10 deals with the alternative schemes put forward by the Town Council. For the reasons JF sets out, this proposal would not be acceptable in many ways.

---

<sup>81</sup> CD2.1 p16

<sup>82</sup> AH XX.

61. The Council refer to a '*parameters plan*'. No such plan has been put forward. As JF explained in his evidence, there has been extensive work on the layout of the Appeal Scheme with the Council's officers. The contentions made at this inquiry (including for a higher density development) have been subject to refinement including on density and building height. These issues have been previously discussed and dismissed by the Council's own officers. There is no other evidence before the inquiry that there is an acceptable alternative layout.<sup>83</sup> Further, the appeal proposals comply too with the Essex Design Guide and have been applauded by Essex Police for the extent to which it complies with Secured by Design: so much so that it was considered worthy of an award.<sup>84</sup>
62. There is a suggestion by the WTC that a larger number of small dwellings would be preferable; they have a preference for 1-bedroom flats and '*bedsits*'. That contention is not supported by policy. The policy requirement is for 1 or 2 dwellings. This has been met. Had the policy requirement been for 1-bedroom units only, this could have been stipulated in the plan. More broadly, there is no alternative needs assessment for dwellings (now seemingly adopted by the Council based on JF's XX). That is because the scheme is policy compliant, and the scheme did not face any objection from the relevant officer of the Council.<sup>85</sup> The mix of dwellings, in the WNP policy is met.
63. The concerns about development north of the pylons have been extensively rehearsed above and need not be addressed further here. The Site is sustainable, provides for connections (including the path over the land to the south which has been secured by an amended conditions) and has received no comments from Essex Highways Authority.

---

<sup>83</sup> JF EiC

<sup>84</sup> §8.9 of the Officer Report (CD1.1)

<sup>85</sup> JF EiC.

## **Conclusion**

64. For the reasons set out above, the appeal proposal is a sound and appropriate response to the constraints which affect the Appeal Site and we respectfully invite the Inspector to allow the Appeal and grant planning permission.

**PETER GOATLEY KC**

**SIONED DAVIES**

**No5 Chambers**

**London-Birmingham-Bristol**

**20<sup>th</sup> December 2022**