



**APPEAL REF: APP/A1530/W/22/3301862**  
**Land at Brook Meadows, Tiptree, Colchester**

Outline application, with only access to be determined at this stage, for the erection of up to 221 dwellings and associated infrastructure and works

## **CASE MANAGEMENT CONFERENCE SUMMARY NOTE**

1. The case management conference (CMC) was held on Tuesday 31 August 2022, from 10:00am to 12:05am, and was led by myself, David Wildsmith, the Inspector appointed to hold this appeal Inquiry. Spokesperson for Colchester Borough Council (the Council) was Mr Simon Pickles (Counsel). Spokesperson for Kler Group Ltd (the appellant) was Mr Freddie Humphreys (Counsel). Other participants at the CMC were Cllr Jonathan Greenwood (Chairman of the Tiptree Neighbourhood Plan Steering Group (TNPSG)), and Ms Annie Gordon (Landscape Conservation Planning Coordinator for the Essex Wildlife Trust (EWT)).
2. No discussion as to the merits of the parties' respective cases took place at the CMC. Its purpose was simply to discuss the management of the appeal and the presentation of evidence, so that the forthcoming Inquiry can be conducted in an efficient and effective manner.

### ***Likely participants at the Inquiry***

3. Mr Pickles indicated that he would also be representing the Council at the Inquiry, and that he expected to call 4 witnesses to present the Council's case – Sandra Scott (Planning Policy), Nigel Cowlin (Landscape and Visual matters), Bethany Jones (5-Year Housing Land Supply (HLS)), and Eleanor Moss (Planning Contributions, other matters and Planning Balance).
4. Mr Humphreys stated that the appellant would be represented at the Inquiry by Miss Sarah Reid QC, and that Miss Reid expected to call 4 witnesses – Michael Robson (Planning), Ben Pycroft (5-year HLS), Chris Jenkinson (Landscape) and Kurt Goodman (Ecology).
5. Cllr Greenwood indicated that he wished to speak at the Inquiry and would seek to call Ms Gordon as an expert witness. The issue of whether Ms Gordon should seek Rule 6 Part status was discussed, but she has subsequently informed the Inspectorate's Case Officer<sup>1</sup> that she will not seek Rule 6 Party status, but will appear at the Inquiry as an interested person.
6. Prior to the CMC an email from the Council to PINS made reference to objections from Natural England (NE) and the Royal Society for the Protection of Birds (RSPB) and there was a suggestion that these bodies may have wished to participate in the CMC and Inquiry. As neither of these bodies attended the CMC, the Inspectorate's Case Officer will contact them to establish their intentions, and will advise the other parties accordingly.
7. Other interested persons may wish to speak at the Inquiry but no further information on this was available at this time. The Council will, however, place a

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<sup>1</sup> Mr Robert Wordsworth – email: [robert.wordsworth@planninginspectorate.gov.uk](mailto:robert.wordsworth@planninginspectorate.gov.uk)

copy of this Summary Note on the appropriate page of its website, so that anyone wishing to attend and speak at the Inquiry will know what is expected of them.

### ***Main issues***

8. The Inquiry will need to consider the following main issues:
  - (i) planning policy and other planning matters – to include:
    - the principle of development;
    - the extent to which the proposed development would be consistent with the development plan for the area;
    - The weight to be given to the emerging Neighbourhood Plan, along with possible issues of prematurity regarding this emerging Plan<sup>2</sup>;
    - the weight to be given to relevant development plan policies;
    - Benefits/disbenefits and the overall planning balance.
  - (ii) The Council's current 5-year HLS situation.
  - (iii) The effect of the proposed development on character and appearance/landscape and visual matters;
  - (iv) The effect of the proposed development on biodiversity and ecology;
  - (v) Whether any submitted planning obligation (and planning conditions) would adequately address the impacts of the proposed development.
9. All of the main issues, with the exception of the 5-Year HLS, will be dealt with by the formal presentation of evidence, which would then be open to cross-examination and questioning. HLS will be dealt with by a focussed round table session (RTS) followed, as necessary, by formal cross-examination of matters of principle and/or approach. A draft agenda for this RTS, prepared jointly by the Council and the appellant, should be submitted by **11 October** – I will then issue a finalised agenda at least 1 week before the Inquiry opens.
10. The main parties agreed to work together to see what agreement could be reached on this topic, with the aim of producing a specific Statement of Common Ground (SoCG) and/or an agreed schedule of the 5-Year HLS sites which are in dispute. Although a date for this SoCG and Schedule was not agreed at the CMC, I consider it reasonable to ask for these documents to be submitted at the same time as the draft RTS agenda – ie, by **11 October**. Parties should inform the Inspectorate's Case Officer if they envisage problems meeting this date.
11. It was agreed that the evidence would be dealt with on a topic basis, with the running order for the Inquiry to be determined once the extent of the evidence and the likely participants are more clearly known.

### ***Evidence: Purpose, preparation and documentation***

12. Details of the content and format of proofs of evidence and appendices, which should be noted and followed by all parties, were attached as an Annex to my Pre-Conference Note.
13. In accordance with the Inquiry Procedure Rules, only summaries of evidence will normally need to be read at the Inquiry, unless the proof of evidence itself is less than 1500 words. Summaries should not exceed 1500 words or 10% of the proof whichever is the greater. They should be submitted at the same time as the proof

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<sup>2</sup> **NOTE** – on this point, The Regulation 16 Consultation for the Tiptree Neighbourhood Plan consultation is scheduled to close on 11 October 2022. The Council undertook to give an initial view as to whether it would be pursuing an objection on the grounds of prematurity in its main proofs of evidence – giving the appellant the opportunity to respond at rebuttal stage, if necessary

of evidence and should contain the main points to be relied on, with limited elaboration, sufficient to enable listeners to make sense of the evidence.

14. Although only the summary will generally be read at the Inquiry – elaborated on if necessary – cross-examination will be permitted on the whole of the evidence contained in the full proof. Witnesses answering questions in cross-examination should give a direct answer to questions put to them, as this can save a great deal of time at an inquiry. Witnesses who follow this guideline will, of course, be allowed to qualify their answer if they so wish.
15. If a party wishes to include material drawn from the internet as part of their evidence, a reference to a website address is not sufficient as website material may change or be removed. Any such material should therefore be printed and submitted in hard copy, normally as an Appendix to the proof of evidence.
16. Any Appeal Decisions and/or legal authorities on which any party intends to rely will need to be prefaced with a note explaining the relevance of the document to the issues arising in this case, together with the propositions on which the party is seeking to rely, with the relevant paragraphs flagged up.
17. Anyone who is representing a group or organisation should describe at the start of their proof:
  - The type of organization represented – for example whether it is a charity, a local Council or a residents' group;
  - what its purposes are;
  - whether it has a written constitution;
  - how many members it has; and
  - how the representation has been authorised by the members.
18. Individuals/local residents can speak at the Inquiry, but I will not want to hear repetitive evidence. If several people want to speak on similar topics they should seek to co-ordinate their statements, or perhaps elect a spokesperson or persons. Individuals who wish to speak at the Inquiry should submit a copy of any statement they intend to make to the Inspectorate's Case Officer no later than 1 week before the opening of the Inquiry – ie, by close of play on **18 October**. That said, it would be acceptable, although not encouraged, for interested persons to provide a copy of their written statement on the day they wish to speak. Ideally I will expect to hear from interested persons on Day 1 of the Inquiry.

### ***Core Documents (CDs)***

19. The parties will work together to agree a draft list of "essential" CDs by close of play on **13 September**, and will aim to produce a final list no later than **20 September**, so that CDs can be properly referenced in the proofs.
20. The CDs should comprise **only** those documents which will be referred to in evidence. Where any documents on which it is intended to rely are lengthy, only relevant extracts need be supplied. Such extracts should, however, be prefaced with the front cover of the relevant document and include any accompanying relevant contextual text. CDs should be prepared as discrete documents, and not as composite pdf documents. A copy of the National Planning Policy Framework does not need to be included as a CD, nor do documents that relate to matters which are not in dispute.
21. Any Appeal Decisions and/or legal authorities on which any of you intend to rely will need to be prefaced with a note explaining the relevance of the document to the issues arising in this case, together with the propositions on which you are seeking to rely, with the relevant paragraphs flagged up.
- 22.

23. I would like to have a copy of the CDs in electronic form, and will also need CDs in hard copy form, for use at the Inquiry. I will await sight of the CD list before deciding whether or not I would like a full set, or just hard copies of selected CDs. The Council undertook to ensure that electronic versions of the CDs will be available on its website, and will also make arrangements for electronic versions of the CDs to be available for examination by people attending the Inquiry.

### ***Statements of Common Ground***

24. The parties are working together to update the main SoCG. It was agreed that a final version of this SoCG should be made available by **13 September**. It should include an agreed list of plans upon which I am required to determine this appeal.
25. The appellant will also seek to share a working draft of the Ecology SoCG with the Council by **13 September**, and will also aim to share it with Cllr Greenwood/Ms Gordon at the same time. The intention is to produce an agreed Ecology SoCG between the Council and the appellant, which also identifies the position and areas of agreement/disagreement with other parties to the Inquiry – principally Cllr Greenwood for the TNPSG) and Ms Gordon for EWT. Ideally this Ecology SoCG should be finalised before proofs need to be submitted – so before **27 September**. Once a final version of the Ecology SoCG has been agreed between the appellant and the Council, it would also be helpful to me to have NE's views and comments on it, as a statutory consultee. This is perhaps best organised through the Inspectorate's Case Officer, and I will therefore ask Mr Wordsworth to send the final Ecology SoCG to NE, requesting their views as a matter of urgency, and to circulate the NE's response to the other parties to the Inquiry.
26. Impact on the countryside is dealt with in the main SoCG, but I made it clear that I would be amenable to receiving a specific SoCG on landscape and visual matters, if the parties wanted to prepare one. No date was discussed for any such Landscape SoCG, but I suggest that if one is to be prepared, it should be submitted by **20 September**, so that it can inform the proofs of evidence.

### ***Conditions***

27. The parties will work together to produce an agreed schedule of suggested conditions, to be imposed if planning permission is to be granted, together with the reasons for them and references to any policy support. This should be submitted at the same time as the proofs of evidence – ie by **27 September**. If there are any conditions which are not agreed, these should still be included in the schedule, with the appropriate explanatory notes.

### ***Planning Obligation***

28. The appellant confirmed that it is intended that a planning obligation will be submitted to address matters raised in the Council's 4<sup>th</sup> reason for refusal. I requested that an early draft of the planning obligation should be provided by **27 September**, with a final agreed draft by **11 October**.
29. This final draft must be accompanied by a Community Infrastructure Levy (CIL) Compliance Statement, prepared by the Council, setting out a fully detailed justification for each obligation sought, detailing how it complies with the CIL Regulations, in particular the test of necessity, in terms of how it would mitigate a particular harm arising out of the proposed development. It should include reference to any policy support and, in relation to any financial contribution, exactly how it has been calculated and on precisely what it would be spent.

Although the pooling restriction on financial contributions has been rescinded, the Statement will still need to set out whether any relevant schemes are the subject of other financial contributions in order for me to be able to come to a view as to whether any contribution sought in relation to this appeal is justified.

30. If needed, I will allow a short time after the close of the Inquiry for submission of a signed version of the obligation, provided all matters of detail have been agreed.

### ***Key dates for submission of documents***

31. To summarise, the following dates were agreed for the submission of documents:

- A final, signed version of the main SoCG by close of play on **13 September**;
- A working draft of the Ecology SoCG, prepared by the appellant, to be shared with the Council by **13 September**, and with Cllr Greenwood/Ms Gordon at the same time. Aim to produce a final version by **27 September**;
- A draft list of "essential" CDs by close of play on **13 September**, with a final agreed list no later than **20 September**;
- A Landscape SoCG, if considered appropriate, by **20 September**;
- Proofs of evidence (and summaries if the proof is over 1500 words in length) by **27 September**;
- Although only appearing as an interested person, Ms Gordon also undertook to submit her evidence on behalf of the EWT at the same time as the main parties' proofs – by **27 September**;
- An early draft of the planning obligation by **27 September**, with a final agreed draft by **11 October**. A CIL Compliance Statement should accompany this final draft planning obligation;
- A Schedule of agreed planning conditions, with comments as necessary, by **27 September**;
- The Council to send a copy of the notification letter setting out details of the Inquiry, and a list of those notified, to PINS no later than **4 October** – if not already sent;
- A draft agenda for the HLS RTS, together with a HLS SoCG and/or a Schedule of any disputed 5-Yr HLS sites by **11 October**. I will issue a final agenda for the RTS at least 1 week before the Inquiry opens;
- Any rebuttal proofs of evidence – where necessary to save Inquiry time - to be submitted by close of play on **11 October**;
- A draft site visit itinerary by **11 October** (see later);
- Final time estimates from the main parties, for openings and closings, evidence in chief and cross-examination etc, to be submitted by **18 October**.

32. All the above dates are summarised in tabular form in Annex A to this Note.

### ***Costs***

33. Neither party currently anticipates making an application for costs. If any application **is** to be made, the Planning Practice Guidance makes it clear that as a matter of good practice it should be made in writing before the Inquiry. I reminded the parties that I have the ability to initiate an award of costs if I consider it necessary and justified. Unreasonable behaviour may include not complying with the agreed timetables.

### ***Inquiry format, venue and facilities***

34. The Inquiry venue will be St Botolph's Church, Church Walk, Colchester, CO2 7EE, with the Inquiry scheduled to open as a physical, "face-to-face" event, at 10:00am on **25 October**.
35. Covid restrictions have been significantly relaxed in recent months, but back-up provision will be made for some sessions to be held "virtually", by Zoom, if any of the participants are unable to attend in person because they need to self-isolate, or for any similar, justified reason. In addition, appropriate social distancing and hand sanitising arrangements will be in place.
36. The Council undertook to make someone available at the Inquiry venue to act as a point of contact for interested persons, during the event.
37. I listed the following facilities that the Inquiry venue should ideally be able to provide, or which should be available close by:
  - An Inquiry room capable of accommodating socially-distanced seating arrangements – lockable, to allow secure overnight storage of documents etc.
  - Microphones/PA system
  - Disabled access and facilities
  - Hearing loop
  - Separate large monitor for the Inspector
  - Retiring rooms for Inspector/parties
  - Wifi/internet access
  - Provision for virtual "Zoom" sessions, if necessary
  - Copying facilities
  - Break-out rooms/refreshments/drinks
  - Restaurant/canteen
  - Parking – Inspector/others
38. The Council undertook to check these matters, and inform the Inspectorate's Case Officer if any of these facilities are unlikely to be available, or if any problems are anticipated.

### ***Sitting times, Inquiry duration and likely Inquiry running order***

39. The initial estimate for the duration of the Inquiry was 7 days – **25-28 October** and **1-3 November** - but it was agreed that it would be prudent to also have **Friday 4 November** as a reserve day.
40. The normal sitting times of the Inquiry will be 10.00am to 5.00 or 5.30pm on Tuesday to Thursday; on Fridays I intend to start at 9.30am and would aim to finish at mid-afternoon – around 3.00-3.30pm, as some people may have lengthy distances to travel. Timings can be reviewed as the Inquiry progresses. Depending on progress, it may be necessary to consider starting at 9.30am on other days. The lunch period will normally be from about 1.00pm to 2.00pm, with short breaks each mid-morning and mid-afternoon. This daily sitting programme may need to be amended if any virtual sessions prove to be necessary.
41. In terms of running order at the Inquiry, following my opening comments on the first day of the Inquiry I will invite opening statements from the main parties, which should ideally be no longer than about 10 minutes each – appellant first, then the Council. I will then hear from any interested persons who wish to speak. If any interested persons cannot attend on the opening day of the Inquiry there

may be some scope to hear from them later in the week, although ideally interested persons should be heard before I hear the appellant's evidence. This matter will become clearer once it is known how many interested persons wish to speak, and on what topics.

42. It was agreed, if possible, to deal with the evidence in the following order – first, ecology and biodiversity; second, landscape and visual matters; third, 5-Year HLS; fourth, planning matters; and finally planning obligations and conditions. However, Mr Pycroft, the appellant's HLS witness is not able to attend during the second week, so the HLS topic will need to be dealt with during the first week of the Inquiry. This may require a slight readjustment to the suggested running order, but this will become clearer once the extent of the evidence and likely participation of interested persons is apparent. I will produce a draft Inquiry timetable, which will need to be kept under review, once the parties have supplied their time estimates.
43. Before hearing closing submissions from the parties, I will wish to carry out an accompanied site visit to the appeal site and surrounding area, and in this regard, the parties are to collaborate on producing a site visit itinerary. Interested persons participating in the Inquiry should have an input to this itinerary, to ensure that it covers all locations that the parties wish me to see. The purpose of the site visit is simply for me to see the site and its surroundings in the context of the evidence I will have read and heard. I cannot listen to any representations or hear any evidence during the visit, but I will want parties to point out physical features that have been referred to in the evidence already submitted.
44. A draft site visit itinerary should be submitted 2 weeks before the opening of the Inquiry – ie by **11 October**. It should include maps and timings, to establish the extent and likely duration of the site visit, so that I can decide when best to fit it in to the Inquiry programme. If the parties want me to visit any locations away from the appeal site itself, these should also be listed on the itinerary – although I may be able to visit some of these locations on an unaccompanied basis, unless the parties consider it essential that I am accompanied.
45. After undertaking the accompanied site visit, and any unaccompanied visits requested by the parties, I will hear the parties' closing submissions. Ideally these should be a maximum of around 30-40 minutes each. I will first hear from any interested person who wishes to summarise their case for me; then the Council; and finally the appellant. Closing submissions should set out your respective cases as they stand at the end of the Inquiry and should be fully cross-referenced. No new evidence is permissible in closing submissions. These closings should be submitted both in writing, and in electronic form to the Inspectorate's Case Officer – ideally in Word format.
46. After hearing closing submissions, and checking if any further applications are to be made, I shall close the Inquiry.

David Wildsmith  
INSPECTOR  
1 September 2022

## **Annex A**

### **Summary of Key dates for the submission of documents**

<b>13 Sep 2022</b>	Deadline for submission of: <ul style="list-style-type: none"><li>• Final, signed version of the main SoCG between the Council and the appellant</li><li>• Working draft Ecology SoCG to be shared by the appellant</li><li>• draft list of “essential” CDs</li></ul>
<b>20 Sep 2022</b>	Deadline for submission of: <ul style="list-style-type: none"><li>• final, agreed Core Documents list</li><li>• Landscape SoCG, if considered appropriate</li></ul>
<b>27 Sep 2022</b>	Deadline for submission of: <ul style="list-style-type: none"><li>• all proofs of evidence (including evidence from Ms Gordon on behalf of EWT)</li><li>• Final version of the Ecology SoCG</li><li>• early draft of the planning obligation</li><li>• Schedule of agreed planning conditions, with comments as necessary</li><li>• final, agreed Core Documents list</li></ul>
<b>4 Oct 2022</b>	Council to send in copy of Inquiry notification letter and list of those notified – if not already submitted
<b>11 Oct 2022</b>	Deadline for submission of: <ul style="list-style-type: none"><li>• final agreed draft planning obligation</li><li>• CIL Compliance Statement (from the Council)</li><li>• draft agenda for HLS round table session</li><li>• HLS SoCG and/or Schedule of 5-Yr HLS sites in dispute</li><li>• any necessary rebuttal proofs</li><li>• draft site visit itinerary</li></ul>
<b>18 Oct 2022</b>	Deadline for submission of: <ul style="list-style-type: none"><li>• final time estimates</li></ul>
<b>25 Oct 2022</b>	Inquiry opens 10.00am