

**TOWN AND COUNTRY PLANNING ACT 1990**

**PLANNING APPEAL BY BLUESQUARE HOMES LIMITED**

**IN RESPECT OF LAND AT 102 EAST ROAD, WEST MERSEA, COLCHESTER CO5 8SA**

**PINS REF. APP/A1530/W/21/3285769**

**OPENING STATEMENT ON BEHALF OF**

**COLCHESTER BOROUGH COUNCIL**

**INTRODUCTION**

1. The application at appeal is for outline planning permission for 56 dwellings, landscaping and access from East Road following demolition of the existing dwelling.
2. The appeal site is located on East Road in West Mersea (“**WM**”). It comprises the dwelling at 101 East Road, its garden and a piece of land to the rear that is contiguous with the garden. The site has been modified late in the day to include a visibility splay to the west along East Road.
3. Planning permission was refused by notice dated 11 July 2020 for eight reasons.
4. Reasons 7 & 8 concerned, respectively, flood risk matters and the absence of a legally binding mechanism to secure a range of planning obligations. Both of these reasons have been or are capable of being resolved, and Colchester Borough Council (“**CBC**”) therefore does not lead evidence on these.
5. The remaining issues, arising from reasons 1–6, are considered summarily below under headings corresponding to the main issues and running order as set out in the Inspector’s CMC Summary dated 14 January 2022 – following reference to the development plan.

## DEVELOPMENT PLAN

6. The statutory development plan for Colchester comprises the Local Plan (2008, 2010, 2014 & 16) and Section 1 Local Plan (2021) as follows:
  - Colchester Local Plan (“**CLP**”) Section 1 - North Essex Authorities Shared Strategic Section 1 Plan 2013-2033. (adopted February 2021) (CD2.5);
  - Core Strategy (2008) as amended by the Focused Review (2014) (CD2.1);
  - Site Allocations (2010) (CD2.3); and
  - Development Policies (2010) (CD2.2).
7. Colchester-specific policies and allocations are set out in emerging CLP (“**eCLP**”) Section 2 (CD4.6). Following closure of consultation on Main Modifications in November 2021, the Inspector’s final notes are expected by the end of February 2022 and adoption will follow.
8. WM-specific policies are set out in the emerging West Mersea Neighbourhood Plan (“**eWMNP**”). It is important to reflect that this re-states the housing allocations made by eCLP, and does not make them itself. eWMNP is scheduled for referendum on 17 March 2022.
9. The most important CLP Section 1 policies are clearly up-to-date and carry full weight. The most relevant other statutory development plan policies remain in accordance with the Framework, and full weight attaches also to these.
10. The most important eCLP Section 2 policies are also up-to-date and carry very significant weight having regard to careful analysis of the nature and extent of objections to the Main Modifications. Significant weight also attaches to eWMNP policies material to the appeal in accordance with NPPG.
11. The statutory and emerging development plan context for the current appeal is helpfully clear (though well-populated) and up-to-date. The evidence clearly demonstrates breaches and failures of accordance to varying degrees of that policy framework. There is and could be no suggestion that this is an instance where statutory or emerging policies point in different directions.
12. The appeal falls as a matter of law to be determined in accordance with the development plan unless material considerations indicate otherwise regardless of whether the tilted or flat balance applies in accordance with [11] of the Framework. The full force of statutory and

emerging development plan policy should be brought to bear on the appeal proposal, whether the flat or tilted balance applies (by virtue of the five year housing land supply (“5YHLS”) position).

### **HOUSING NEED AND WHETHER CBC CAN DEMONSTRATE A 5YHLS OF DELIVERABLE SITES**

#### *Housing Need*

13. The housing requirements of the Borough as a whole have recently been determined via the CLP process. The Borough is part of a wider housing market area (“HMA”), and the objectively assessed housing need (“OAN”) is not in dispute. That is to say, the Appellant does not suggest a Borough-specific housing requirement beyond the OAN. eCLP Section 2 makes provision for the OAN to be met through the plan period, including the allocation of 200 dwellings to the Sustainable Settlement of WM (see eCLP Section 2 Table SG2, CD4.06).
14. The Appellant advances instead a case that there is a requirement for housing within West Mersea beyond that allocated in eCLP Section 2 based upon a toolkit for neighbourhood planners (CD3.8). The eCLP Section 2 allocation is founded on the OAN. It gives effect to the spatial strategy adopted as part of CLP Section 1 Policy SP3. The Appellant does not advance a case for further residential development in WM based upon the rationale at CLP Section 2 Policy SG2. The toolkit is for use, however, where there is no housing requirement figure available (whether in a Local Plan, or provided by the LPA upon request). It is therefore not relevant to WM. Its mechanistic approach assumes or would result in allocations to Sustainable Settlements regardless of CLP’s spatial strategy. The Appellant seeks in substance to re-run decisions taken in the CLP section 2 (not eWMNP) plan-process concerning the quantum and location of future residential development in WM. At a more detailed level, the case presented does not reflect the continuing contribution of windfall sites. The relative affordability of housing in WM and the age profile of its population do no more than reflect its place in the wider HMA. These factors and the Housing Needs Survey that informs eWMNP do not justify change to the allocation of housing in accordance with CLP Section 1 Policy SP3 spatial strategy.
15. Turning to need for provision of market housing more generally, the contribution that the appeal proposal might make to housing provision and economic activity need to be assessed in the context of Colchester’s successful record of housing production and the evidence of its emergence from the pandemic (referred to briefly under planning balance below).

5YHLS

16. Since the Main Modifications are the Examiner's, it is reasonable to anticipate that eCLP Section 2 and the allocations within it will be found sound, and enable CBC to demonstrate a 5YHLS through the plan period to 2033 without further allocations. It is the Examiner's judgment to that effect that the Appellant seeks to place at issue at the point of imminent adoption of eCLP Section 2.
17. The signed Statement of Common Ground ("**SoCG**") on Housing Land Supply sets out as follows. The 5YHLS requirement for the relevant period, i.e. 1 April 2021 – 31 March 2026, is agreed to be 4,830 (inc. 5% buffer). CBC's position is that the deliverable supply is 5,545, i.e. 5.74 years. The Appellant's position is that the deliverable supply is 4,716, i.e. **4.88 years**. The difference arises from what the Appellant explains to be two categories of deduction. But in reality the difference actually involves the application of planning judgment to the evidence concerning the deliverability of: (i) 7 sites/429 units whose non-deliverability the Appellant attributes to over-optimism; and (ii) 2 sites/400 units whose non-deliverability it attributes to site-specific evidence.
18. The threshold for determination whether the tilted balance applies is clear-cut, i.e. 4,830. The Appellant asserts that the deliverable supply is short by **114 dwellings**. CBC will therefore succeed if it is able to satisfy the Inspector that 114 of the disputed 829 dwellings are deliverable.
19. There is ample basis upon which to conclude that CBC is able to demonstrate that the 5YHLS is 5.74 years. That said, 6 of 7 sites within category (i) above, i.e. all except Mill Road, fall within sub-paragraph (a) of the definition of "*deliverable*", and 5 are under construction. The Appellant provides no clear, site-specific evidence to justify that any of the sub-paragraph (a) sites are not deliverable. For example only, Barbrook Lane, Tiptree is itself sufficient to meet the threshold beyond which 1 5YHLS has been demonstrated (200 dwellings being built out at an average of 50 dpa, completions commencing May 2022, by a developer with a track record of fast delivery in the Borough).
20. [At exactly 5.00pm on the Friday before the opening of this inquiry, the Appellant submitted further evidence purporting to explain that, contrary to the SoCG, the deliverable supply is

4,699, i.e. **4.86 years**<sup>1</sup>. The Appellant asserts on this basis that the deliverable supply is short by **131 dwellings**. This is not a material numerical change. CBC will therefore succeed if it is able to satisfy the Inspector that 131 of the disputed 829 dwellings are deliverable.

21. Whilst the categories of deduction remain the same, their contents and totals vary from the Appellant's primary or erstwhile case. Category (i) now comprises 4 sites and the resulting deduction is reduced to 266 dwellings (cf. 429 previously). The Appellant has deleted 4 of the original 7 sites (including Mill Road) from category (i), and included a deletion of 10 units on Land West of Lakelands. Category (ii) now comprises 3 sites by reason of the inclusion of Mill Road and totals 632 dwellings (cf. 400 previously).
22. There remains ample basis upon which to conclude that CBC is able to demonstrate that the 5YHLS is 5.74 years. That said, there remains no clear, site-specific evidence to justify a conclusion that any of category (i) sites also within sub-paragraph (a) (of the definition of "deliverable") are not deliverable. The Appellant does not refer to any change in circumstance that justifies its change of position in respect of individual sites within its category (i) (some retained, others dropped). Its own revision of what sites do and do not fall within its category (i) is sufficient to justify rejection of reference to estimates of over-optimism as any sort of justification for judgments about when specific sites will come forward at all. Finally, Barbrook Lane remains itself sufficient to meet the threshold beyond which a 5YHLS has been demonstrated (again, for example only).]

#### **EFFECT ON THE CHARACTER AND APPEARANCE OF THE AREA INCLUDING THE SETTING OF HERITAGE ASSETS**

##### *Character & appearance of the area*

23. The appeal site enjoys key characteristics of the local landscape by virtue of its open pastoral nature with hedgerows along two boundaries and views south/south-east over the countryside, and to the distant sea beyond. It also retains elements of the historic landscape pattern.

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<sup>1</sup> Explained as "... revised documents to correct arithmetical errors that have been picked up in the Housing Land Supply POE"

24. The development would obliterate the site's openness and pastoral character. It is likely to degrade or diminish a range of characteristic features such as boundary hedgerows, which cannot be adequately mitigated. The overall landscape effect on the site itself is therefore likely to be "major adverse". The magnitude of change on the surrounding landscape is likely to be medium. But the quality of that landscape is of at least moderate value, and it forms part of the core of the Coastal Protection Belt. The effect on surrounding landscape could therefore be "moderate adverse" overall. Mitigation measures are unlikely to be able to address all the indirect landscape effects, leaving a permanent backdrop of dense rooftops, lighting columns and other infrastructure to the surrounding open countryside to the south/south-east.
25. Visually, the proposal would introduce a permanent series of ridgelines with a regular form and depth corresponding to a higher density of more urban form than that found currently along East Road. These would have a significant visual effect from near-view viewpoints on the public right of way ("**PRoW**") south of the site, on neighbouring residents, and the setting of this part of East Road and Cross Lane. The permanent effect would be "major adverse" from the southern point of the Site, where it meets the PRoW. Landscape mitigation is unlikely to be able to mitigate all the significant visual effects on PRoW users and on the open character to the south due to development density and the site's rising landform.
26. Loss of the openness and pastoral character of the Site, effects on the wider landscape to the south, and adverse effects on PRoW users and their amenity would breach: Core Strategy Policy ENV1 (Environment) (CD2.1): Development Policies DP1 (Design and Amenity) and DP23 (Coastal Areas) (CD2.3); and CLP Section 1 Policy SP3 (Spatial Strategy) (CD2.5). They would also breach: eCLP Section 2 Policies ENV1 (Environment), ENV2 (Coastal Areas), and OV2 (Countryside) (CD4.6); and eWMNP Policies WM21 (Biodiversity) and WM22 (Mitigating Landscape) (CD4.7).

*Setting of Garden Cottage (Nos. 114-116 East Road)*

27. Garden Cottage has been increasingly surrounded by residential development over time such that the appeal site is the final contextual and vestigial green space recalling its historic and formerly rural setting. Despite this history of residential and related development around it, the further consolidation of residential development and loss of the remaining surviving area of land immediately to the south would cause further harm insofar as the ability of the public to

understand Garden Cottage as a pair of artisan rural cottages would be finally eclipsed by suburban development to the rear. That said, it is recognised that the harm to significance would be less than substantial harm, at the lower end of the spectrum of harm. Moreover, the density of the illustrative development layout reinforces CBC's opinion that there is no capacity to effectively mitigate this adverse impact upon the setting and significance of the listed building.

28. Nonetheless, great weight attaches to the conservation of heritage assets, and harm to their significance requires clear and convincing justification in accordance with [200] of the Framework. That justification does not exist here in light of the planning balance below. It is therefore considered that the appeal proposal is contrary to NPPF [199,200,202,206] (CD3.1), CLP Section 1 Policy SP7 (CD2.5), Core Strategy Policies ENV1, UR2 (CD2.1), Development Plan Policies Policy DP14 (CD2.2), and eCLP Section 2 Policies OV2 & DM16 (CD4.1).

#### **DESIGN AND DENSITY CONSIDERATIONS**

29. The application site is bordered to the north and west by linear development along existing vehicular routes. Dwellings are generally detached, or semi-detached and single storey dwellings are not uncommon. The site itself has a predominantly verdant and open character and its context is that of a semi-rural, edge of settlement location. The site should therefore benefit from a rural system of spatial planning.
30. By contrast, the application seeks permission for 56 dwellings at an average density of 33dph. This is at odds with existing densities surrounding the site, and result in what the Essex Design Guide refers to as an "urban grouping". The Guide also refers to the possibility of varying densities across sites, to effect any transition.
31. Bearing in mind that this is an outline application, the precise consequences of the proposed density cannot be predicted; but they include increased scale & massing, finer grain, increased plot ration and other impacts. It is noteworthy also that densities of 20 & 17 dph have been considered appropriate at Dawes Road & Brierley Paddocks, within close proximity to the appeal site.

32. It is therefore considered that the appeal proposal is contrary to NPPF [124, 130] (CD3.1), CLP Section 1 Policy SP7 (CD2.5), Core Strategy Policies UR2 and H2 (CD2.1), Development Plan Policies Policy DP1 (CD2.2), and eCLP Section 2 Policies DM9 & DM15 (CD4.1).

#### **EFFECT ON HIGHWAY SAFETY**

33. Concerns about the provision of safe access to the appeal site played a part in its failure to secure allocation through the CLP process, and it is apparent from the evidence that those concerns have not been resolved.
34. It is not possible to achieve the required 2.4 x 43 metre visibility splay to the east due to part of the splay being outside the extent of highway and over land under third party control, i.e. it is within the same ownership as 104 and 104a East Road. That specific matter is not in dispute. The Appellant cannot therefore control what may take place, either temporarily or permanently, within that area of land albeit it relies upon to achieve the required visibility splay. A condition requiring that that land remain open would fail, in these circumstances, the tests of reasonableness and enforceability. The Appellant's purported reliance on condition 9 attached to planning permission F/COL/02/0190 (CD10.1) does not bring the land concerned within its control and does not therefore resolve the issue of control.
35. As observed on site and reflected within several images taken from Google, the forecourt to 104 and 104a East Road is routinely not clear to ground as there are sometimes vehicles and a caravan parked upon it. Depending on their position, these vehicles and caravan could or would restrict the required visibility splays, including those conditioned for 104 and 104a East Road. Indeed, the incidence of parking within the visibility splay is also not in dispute.
36. There exists clear *prima facie* evidence of continuous breach of condition 9 by parking of vehicles and a caravan, and a good prospect that CBC would be bound to issue a certificate of lawful development in respect of that activity, were an application for one to be submitted. It would, furthermore, be unreasonable to take enforcement action for breach of condition 9 to facilitate another development, i.e. for a purpose unrelated to the development to which condition 9 itself relates – and resolve what is, in substance, a land assembly issue.



37. The Appellant has recently submitted “*Option B highway access and traffic calming scheme*”. It remains to be confirmed that the Appellant has secured ownership/control over the land required from 100 East Road to accommodate this scheme; without legal confirmation of that ownership/control, there is no Option B. But assuming that it provided, the Highway Authority considers that the alternative scheme is unacceptable for reasons concerning: (i) inappropriate use of traffic calming to enable a sub-standard access to a development site; (ii) potential detriment in terms of air quality and noise; (iii) various vehicle manoeuvres, as shown on swept path diagrams, would be detrimental to highway safety; (iv) potential for confusion and possible conflict arising from a bus stopped at the two bus stops nearby (relocated); (v) lack of clarity about whether additional street light columns could be accommodated within highway land and/or land under the control/ownership of the Appellant<sup>2</sup>. Finally, it is noted that the alternative has not been but should be subject to public consultation, and that a TRO would be required to provide the extensive waiting restrictions apparently shown.
38. For these reasons, the proposed means of access is contrary to Development Policies Policy DP17 (CD2.2) and eCLP Section 2 Policy DM21 (CD4.6), the NPPF (CD3.1), and the Highway Authority’s Development Management Policies (CD2.6).

#### **ACCORDANCE WITH DEVELOPMENT PLAN POLICY AS A WHOLE AND THE PLANNING BALANCE**

##### *Development plan policy as a whole*

39. Ms Scott explains that the appeal proposal fails to accord with a tranche of development plan policies as follows. First, it is contrary to CLP Section 1 Policy SP1 (Presumption in Favour of Sustainable Development) (CD2.5) because it does not fulfil the environmental element of sustainable development or comply with the CLP as a whole.
40. Second, it fails also to accord with CLP Section 1 Policy SP3 (Spatial Strategy for North Essex) (CD2.5) since eCLP Section 2 Policies SG2 & SS12a (CD4.6) and eWMNP Policy WM2 (CD4.7) combined have provided for development at within or adjoining WM according to its scale, sustainability and existing role, which maintains that settlement’s distinctive character and role.

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<sup>2</sup> Provision on cycle by-passes at the build outs is acknowledged

41. Third, the appeal proposal does not accord with or at least derive substantial support from CLP Section 1 Policy SP4 (Meeting Housing Needs) (CD2.5) because sufficient sites have been allocated through the plan-led system to meet the identified housing requirement. Additional unplanned site are therefore not required aside from the fact that the proposal would cause demonstrable environmental harm.
42. Fourth, the proposal is contrary to that part of Core Strategy Policy ENV 1 (Environment) (CD2.1) that protects unallocated greenfield land outside settlement boundaries, i.e. protects countryside in principle for its own sake. The inspector at the recent Maldon Road, Tiptree appeal (CD7.5) confirmed that full weight should attach to this element of Policy ENV1. Though they continue to emerge for the time being, the proposal is also in breach of eCLP Section 2 Policies ENV1 & OV2 (CD4.6) which are set to carry forwards policy for the protection of the intrinsic character and beauty of the countryside. Linked to this, it also is fails to accord with emerging policy concerning development outside settlement boundaries and protection of the countryside beyond them, and eWMNP Policy WM1 (Planning Strategy) (CD4.7) in particular.
43. Fifth, it is in breach of Development Policies Policy DP23 (Coastal Areas) (CD2.2). It does not require a coastal location, and is harmful to both landscape and heritage interests. Again, eCLP Section 2 Policy ENV2 (Coastal Areas) (CD4.6) is set to carry these criteria forwards.
44. Aside from these policy breaches, the appeal proposal is also not in accordance with development plan policy concerning effect on landscape character including heritage assets, design and density matters, and highways (see above).

*Planning balance*

45. Substantial weight attaches to objections to development of the site in principle described in the evidence Ms Scott, and to the harm that would be result to local landscape character and appearance, and by reason of design and density considerations. Small additional weight arises from adverse impact to the significance of Garden Cottage. Very substantial further weight indeed attaches to adverse impact on highway safety – and it is difficult to contemplate that this could be justified. The weight attaching to each of these objections is underlined by the fact that they emerge or result from breaches of development plan policy.

46. CBC accepts, on the other hand, that the appeal proposal would result in economic benefits through the construction phase, and by helping to sustain the vitality & viability of services in WM. The fact that these benefits would result as the nation emerges from the pandemic adds to these benefits; but that is tempered by the Borough's diverse and relatively resilient economy. Moderate weight therefore attaches to economic benefits overall.
47. The provision of market housing is also a social benefit. But (again) this is tempered by the past and present performance of the Borough in delivering market housing. The provision of affordable housing is clearly also a benefit – but one to which moderate weight attaches overall. This is so having regard to the judgment that 30% is concluded to be sufficient to meet affordable housing requirements across the Borough as a whole and, importantly, the reasonable pipeline of supply being developed for those expressing a demand or need for affordable housing in WM.
48. CBC does not consider that it is clear that the appeal proposal would result in environmental benefits.
49. To conclude, the sum of benefits clearly do not outweigh the harms or dis-benefits assessed on the flat balance – and would not also do so also should it be considered that the tilted balance applies.

#### **CONCLUSION**

50. For the reasons summarised above, the Inspector will be respectfully invited to dismiss this appeal.

SIMON PICKLES

22 February 2022

**Landmark Chambers**

**London EC4A 2HG**