

Colchester Borough Council

# **The Wivenhoe Neighbourhood Plan**

## **Independent Examiner's Report**

By Ann Skippers BSc (Hons) MRTPI FRSA AoU

18 March 2019

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## Summary

I have been appointed as the independent examiner of the Wivenhoe Neighbourhood Development Plan.

The Plan takes a commendably ambitious stance allocating four sites for residential development providing a total of some 250 dwellings. It contains 32 policies that cover a wide range of issues including the designation of a new settlement boundary for Wivenhoe and a River Colne Special Character Area as well as including site specific policies on key sites throughout the Plan area. In addition a number of community actions are proposed.

The Plan has unfortunately been significantly delayed and the examination paused whilst clarity over the position with habitats regulations was sought; a source of frustration for everyone concerned. The basic condition introduced in December 2018 has meant that the Plan could proceed and as a result it must be one of the first neighbourhood plans in England since the introduction of the new basic condition to have an appropriate assessment carried out.

I have recommended a number of modifications to both the policies and their supporting text which, by and large, are to help ensure that the Plan is a workable document that provides a practical and clear framework for decision making. My reasoning is set out in detail in this report.

Subject to those modifications, I have concluded that the Plan does meet the basic conditions and all the other requirements I am obliged to examine. I am therefore pleased to recommend to Colchester Borough Council that the Wivenhoe Neighbourhood Development Plan, as modified by my recommendations, can go forward to a referendum.

In considering whether the referendum area should be extended beyond the Neighbourhood Plan area I see no reason to alter or extend this area for the purpose of holding a referendum.

Ann Skippers MRTPI  
Director, Ann Skippers Planning  
18 March 2019



## 1.0 Introduction

This is the report of the independent examiner into the Wivenhoe Neighbourhood Development Plan (the Plan).

The Localism Act 2011 provides a welcome opportunity for communities to shape the future of the places where they live and work and to deliver the sustainable development they need. One way of achieving this is through the production of a neighbourhood plan.

I have been appointed by Colchester Borough Council (CBC) with the agreement of the Town Council, to undertake this independent examination.

I am independent of the qualifying body and the local authority. I have no interest in any land that may be affected by the Plan. I am a chartered town planner with over thirty years experience in planning and have worked in the public, private and academic sectors and am an experienced examiner of neighbourhood plans. I therefore have the appropriate qualifications and experience to carry out this independent examination.

## 2.0 The role of the independent examiner

The examiner must assess whether a neighbourhood plan meets the basic conditions and other matters set out in paragraph 8 of Schedule 4B of the Town and Country Planning Act 1990 (as amended).

The basic conditions<sup>1</sup> are:

- Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the neighbourhood plan
- The making of the neighbourhood plan contributes to the achievement of sustainable development
- The making of the neighbourhood plan is in general conformity with the strategic policies contained in the development plan for the area
- The making of the neighbourhood plan does not breach, and is otherwise compatible with, European Union (EU) obligations
- Prescribed conditions are met in relation to the neighbourhood plan and prescribed matters have been complied with in connection with the proposal for the neighbourhood plan.

Regulations 32 and 33 of the Neighbourhood Planning (General) Regulations 2012 (as amended) set out two additional basic conditions to those set out in primary legislation

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<sup>1</sup> Set out in paragraph 8 (2) of Schedule 4B of the Town and Country Planning Act 1990 (as amended)

and referred to in the paragraph above. Only one is applicable to neighbourhood plans and was brought into effect on 28 December 2018.<sup>2</sup> It states that:

- The making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017.

The examiner is also required to check<sup>3</sup> whether the neighbourhood plan:

- Has been prepared and submitted for examination by a qualifying body
- Has been prepared for an area that has been properly designated for such plan preparation
- Meets the requirements to i) specify the period to which it has effect; ii) not include provision about excluded development; and iii) not relate to more than one neighbourhood area and that
- Its policies relate to the development and use of land for a designated neighbourhood area.

I must also consider whether the draft neighbourhood plan is compatible with Convention rights.<sup>4</sup>

The examiner must then make one of the following recommendations:

- The neighbourhood plan can proceed to a referendum on the basis it meets all the necessary legal requirements
- The neighbourhood plan can proceed to a referendum subject to modifications or
- The neighbourhood plan should not proceed to a referendum on the basis it does not meet the necessary legal requirements.

If the plan can proceed to a referendum with or without modifications, the examiner must also consider whether the referendum area should be extended beyond the neighbourhood plan area to which it relates.

If the plan goes forward to referendum and more than 50% of those voting vote in favour of the plan then it is made by the relevant local authority, in this case Colchester Borough Council. The plan then becomes part of the 'development plan' for the area and a statutory consideration in guiding future development and in the determination of planning applications within the plan area.

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<sup>2</sup> Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018

<sup>3</sup> Set out in sections 38A and 38B of the Planning and Compulsory Purchase Act 2004 as amended by the Localism Act

<sup>4</sup> The combined effect of the Town and Country Planning Act Schedule 4B para 8(6) and para 10 (3)(b) and the Human Rights Act 1998

### 3.0 Neighbourhood plan preparation

A Consultation Statement has been submitted.

Work in earnest began on the Plan in 2013 with an Open Day to enable the community to find out about the Plan. Initial thoughts were gathered through a questionnaire for the youth, a survey of commuters, and engagement with primary school age children. This resulted in a number of areas of concern being identified. A questionnaire was developed for residents and delivered to 3, 750 households in November 2013. A response rate of 29% was achieved. Analysis of the survey was fed back to the community in a variety of ways in early 2014.

A Business Breakfast was held in early 2014. An online survey aimed at 11 – 18 year olds was carried out. Essex University students were surveyed. Attendance at events such as annual open gardens, market and so on helped to keep the profile of the Plan high on the agenda.

A public consultation was held on 22 November 2014 to present initial proposals for the Plan. It was advertised using a variety of means. Some 230 residents attended with another 1, 400 comments entered online. Around the same time, an over 60 group were consulted at an afternoon tea event and a lunch was held for local businesses, university representatives and councilors.

In 2015, a communications and community engagement group was formed to help with publicity and feedback to residents. A vision and objectives document was published and circulated to various organisations. Pop up events were held.

Consultation on the housing sites was held in July 2015. This event was preceded by a stall at the Wivenhoe Regatta and widely advertised including by letter to landowners. 152 residents attended over the weekend event.

A first complete draft of the Plan was presented to the community in February 2016. Again widespread publicity took place and notifications made to local organisations and some statutory consultees.

As the Plan evolved, a compendious document shows the thinking and reports of the working groups and process of evolution.

Pre-submission consultation on the draft Plan took place between 26 July – 6 September 2016. This stage was promoted on the Town Council's and the Plan's websites, press notices, notification to consultees, hard copies being available at various locations, posters and banners around the town and cascading information via schools and local clubs and associations.

I consider there has been satisfactory engagement with the community and other bodies throughout the process.

Submission (Regulation 16) consultation was carried out between 5 February – 19 March 2018.

The Regulation 16 stage attracted 16 representations from different people or organisations. I have taken all the representations received into account.

## 4.0 The examination process

I have set out my remit earlier in this report. It is useful to bear in mind that the examiner's role is limited to testing whether or not the submitted neighbourhood plan meets the basic conditions and other matters set out in paragraph 8 of Schedule 4B to the Town and Country Planning Act 1990 (as amended).<sup>5</sup> Planning Practice Guidance (PPG) confirms that the examiner is not testing the soundness of a neighbourhood plan or examining other material considerations.<sup>6</sup> Where I find that policies do meet the basic conditions, it is not necessary for me to consider if further amendments or additions are required.

Some representations put forward comments that add text or content to the Plan or could otherwise improve and enhance the document. The Town Council may wish to consider these suggestions in the final version of the Plan or when the Plan is reviewed as appropriate, but they are not modifications I need to make in respect of my role and remit.

Where modifications are recommended they appear in **bold text**. Where I have suggested specific changes to the wording of the policies or new wording these appear in ***bold italics***.

As a result of some modifications consequential amendments may be required. These can include changing section headings, amending the contents page, renumbering paragraphs or pages, ensuring that supporting appendices and other documents align with the final version of the Plan and so on. I regard these as primarily matters of final presentation and do not specifically refer to such modifications, but have an expectation that a common sense approach will be taken and such editing carried out.

PPG<sup>7</sup> explains that it is expected that the examination will not include a public hearing. Rather the examiner should reach a view by considering written representations. Where an examiner considers it necessary to ensure adequate examination of an issue or to ensure a person has a fair chance to put a case, then a hearing must be held.<sup>8</sup>

I sought clarification on a number of matters from the Town Council and CBC in writing and my list of questions is attached to this report as Appendix 2. I am very grateful to

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<sup>5</sup> PPG para 055 ref id 41-055-20180222

<sup>6</sup> *Ibid*

<sup>7</sup> *Ibid* para 056 ref id 41-056-20180222

<sup>8</sup> *Ibid*

both Councils who have provided me with comprehensive answers to my questions. The responses received (all publicly available) have enabled me to examine the Plan without the need for a hearing.

Additionally, NPIERS, the Neighbourhood Planning Independent Examiner Referral Service, published guidance to service users and examiners earlier this year. Although I have not been appointed via NPIERS to undertake this examination, I am a member of the NPIERS Panel and consider it appropriate for me to take account of this guidance.

Amongst other matters, the guidance indicates that the qualifying body, in this case, Wivenhoe Town Council, will normally be given an opportunity to comment upon any representations made by other parties at the Regulation 16 consultation stage should they wish to do so. There is no obligation for the Town Council to make any comments; it is only if they wish to do so. If a qualifying body wishes to make comments, the guidance indicates that any such comments should be made within two weeks after close of the Regulation 16 stage. The Town Council submitted comments dated 12 June 2018 and these are available from the CBC website.

CBC and the Town Council also helpfully worked together to consider outstanding matters between the parties.

I am very grateful to both Councils for the assistance given to me during the course of the examination and for ensuring that it ran smoothly.

I made an unaccompanied site visit to the neighbourhood plan area on 10 March 2019.

## **5.0 Compliance with matters other than the basic conditions**

I now check the various matters set out in section 2.0 of this report.

### **Qualifying body**

Wivenhoe Town Council is the qualifying body able to lead preparation of a neighbourhood plan.

### **Plan area**

The Plan area was approved by CBC on 29 July 2013. The Plan area covers the Town Council's administrative area and extends beyond it to include most of two wards amalgamated in May 2016 (after the area designation) of Wivenhoe Cross and Wivenhoe Quay. Consultation on the plan area was carried out and publicity for it thorough. No objections were received to the area. Spatially the designation is logical. The Plan relates to the approved area and does not relate to more than one neighbourhood area and therefore complies with the necessary requirements. The Plan area is shown on page 7 of the Plan.



## **Plan period**

The Plan covers the period up to 2032. CBC suggests that the end date is changed to 2033 to align with the time period for the emerging Local Plan. It would also be useful to also include a start date for the Plan and to include the time period to which it applies on the front cover.

The modification to the end date of the Plan applies throughout the Plan, but is not repeated at every juncture. This includes the vision.

- **Incorporate a start date of 2019 for the Plan**
- **Change the references to the end date of “2032” to “2033” throughout the Plan**
- **State the start and end dates (2019 – 2033) to the Plan applies on the front cover as well as inside the Plan**

## **Excluded development**

The Plan does not include policies that relate to any of the categories of excluded development and therefore meets this requirement.

## **Development and use of land**

Policies in neighbourhood plans must relate to the development and use of land. Sometimes neighbourhood plans contain aspirational policies or projects that signal the community’s priorities for the future of their local area, but are not related to the development and use of land. If I consider a policy or proposal to fall within this category, I will recommend it be clearly differentiated. This is because wider community aspirations than those relating to development and use of land can be included in a neighbourhood plan, but actions dealing with non-land use matters should be clearly identifiable.<sup>9</sup>

I note that the Plan already makes this distinction by explaining that policies appear in yellow boxes and proposals for action, the community aspirations that do not form part of the planning policies, are shaded in blue. The distinction is explained well in Section 3 of the Plan. I consider this sufficient for the style of Plan to confirm that this requirement can be satisfactorily met.

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<sup>9</sup> PPG para 004 ref id 41-004-20170728

## 6.0 The basic conditions

### Regard to national policy and advice

The Government published a National Planning Policy Framework (NPPF) in 2012. On 24 July 2018, a revised NPPF was published. On 19 February 2019, the revised NPPF was updated and replaces the previous NPPF published in March 2012 and revised last July.

Paragraph 214 in Annex 1 of that document explains that:

“The policies in the previous Framework published in March 2012 will apply for the purpose of examining plans, where those plans are submitted on or before 24 January 2019. Where such plans are withdrawn or otherwise do not proceed to become part of the development plan, the policies contained in this Framework will apply to any subsequent plan produced for the area concerned.”

Footnote 69 explains that for neighbourhood plans “submission” means where a qualifying body submits a plan proposal to the local planning authority in accordance with regulation 15 of the Neighbourhood Planning (General) Regulations 2012.

It is therefore clear that it is the previous NPPF published in 2012 that is relevant to this particular examination.

Any references to the NPPF in this report refer to the NPPF published in 2012 unless otherwise stated.

The NPPF is the main document that sets out national planning policy. In particular it explains that the application of the presumption in favour of sustainable development will mean that neighbourhood plans should support the strategic development needs set out in Local Plans, plan positively to support local development, shaping and directing development that is outside the strategic elements of the Local Plan and identify opportunities to use Neighbourhood Development Orders to enable developments that are consistent with the neighbourhood plan to proceed.<sup>10</sup>

The NPPF also makes it clear that neighbourhood plans should be aligned with the strategic needs and priorities of the wider local area. In other words neighbourhood plans must be in general conformity with the strategic policies of the Local Plan. They cannot promote less development than that set out in the Local Plan or undermine its strategic policies.<sup>11</sup>

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<sup>10</sup> NPPF paras 14, 16

<sup>11</sup> *Ibid* para 184

The NPPF indicates that plans should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency.<sup>12</sup>

On 6 March 2014, the Government published a suite of planning guidance referred to as Planning Practice Guidance (PPG). This is an online resource available at [planningguidance.communities.gov.uk](http://planningguidance.communities.gov.uk) which is regularly updated. The planning guidance contains a wealth of information relating to neighbourhood planning. I have also had regard to PPG in preparing this report.

PPG indicates that a policy should be clear and unambiguous<sup>13</sup> to enable a decision maker to apply it consistently and with confidence when determining planning applications. The guidance advises that policies should be concise, precise and supported by appropriate evidence, reflecting and responding to both the context and the characteristics of the area.<sup>14</sup>

PPG states there is no 'tick box' list of evidence required, but proportionate, robust evidence should support the choices made and the approach taken.<sup>15</sup> It continues that the evidence should be drawn upon to explain succinctly the intention and rationale of the policies.<sup>16</sup>

Whilst this has formed part of my own assessment, the Basic Conditions Statement sets out how the Plan has responded to national policy and guidance through two simple tables to show how the Plan's policies align with the NPPF's goals and policies.

### **Contribute to the achievement of sustainable development**

A qualifying body must demonstrate how the making of a neighbourhood plan would contribute to the achievement of sustainable development. The NPPF as a whole<sup>17</sup> constitutes the Government's view of what sustainable development means in practice for planning. The Framework explains that there are three dimensions to sustainable development: economic, social and environmental.<sup>18</sup>

### **General conformity with the strategic policies in the development plan**

The development plan relevant to this examination includes the Core Strategy (CS) adopted in 2008 and amended in 2014, the Site Allocations Development Plan Document (SADPD) adopted in 2010 and the Development Policies DPD (DPDPD) adopted in 2010 and amended in 2014. The Local Plan Focused Review was adopted 16 July 2014 (LP 2001 – 2021).

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<sup>12</sup> NPPF para 17

<sup>13</sup> PPG para 041 ref id 41-041-20140306

<sup>14</sup> *Ibid*

<sup>15</sup> *Ibid* para 040 ref id 41-040-20160211

<sup>16</sup> *Ibid*

<sup>17</sup> NPPF para 6 which indicates paras 18 – 219 of the Framework constitute the Government's view of what sustainable development means in practice

<sup>18</sup> *Ibid* para 7

The Basic Conditions Statement contains a table that shows the relationship between the Plan and those CBC level policies considered to be relevant to this Plan. This has provided a useful context for my own consideration of this basic condition and is comprehensive in its coverage and commentary.

### ***Emerging plans at CBC level of relevance to this examination***

CBC advise that the Colchester Emerging Local Plan comprising a Strategic Section 1 (ELP) and Borough wide Section 2 are relevant.

The ELP was submitted to the Planning Inspectorate in October 2017. Examination sessions were held on the shared Section 1, completed with partner authorities Braintree and Tendring District Councils in January and May 2018.

The Inspector requested further work be carried out on the ELP's evidence base and Sustainability Appraisal and accordingly the examination is 'paused'. It is envisaged that consideration of the further work will take place later this year. Section 2 would then follow at a later date.

### **European Union Obligations**

A neighbourhood plan must be compatible with European Union (EU) obligations, as incorporated into United Kingdom law, in order to be legally compliant. A number of EU obligations may be of relevance including Directives 2001/42/EC (Strategic Environmental Assessment), 2011/92/EU (Environmental Impact Assessment), 92/43/EEC (Habitats), 2009/147/EC (Wild Birds), 2008/98/EC (Waste), 2008/50/EC (Air Quality) and 2000/60/EC (Water).

### ***Strategic Environmental Assessment***

Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment is relevant. Its purpose is to provide a high level of protection of the environment by incorporating environmental considerations into the process of preparing plans and programmes. This Directive is commonly referred to as the Strategic Environment Assessment (SEA) Directive. The Directive is transposed into UK law through the Environmental Assessment of Plans and Programmes Regulations 2004.

An Environmental Report (ER) dated August 2016 has been submitted as an earlier screening opinion concluded that a SEA would be required. The ER was prepared by Place Services and is based on the Plan submitted in September 2016. The ER confirms that a Scoping Report dated June 2015 was prepared and sent to the statutory consultees. Comments were received from Natural England, Historic England and the Environment Agency and changes made to respond to the comments made.

Following some refinement to policies and the inclusion of a new section and policy (Section 18 and Policy WIV 32) after comments from Natural England (NE) and after a

Health Check, an Addendum of November 2017 was produced. This considered the revised Plan. It was published alongside the submission version of the Plan.

The ER and its Addendum assess all of the submission policies in the Plan comprehensively. It deals with the issues appropriately for the content and level of detail in the Plan. This in line with PPG advice which confirms the SEA does not have to be done in any more detail or using more resources than is considered to be appropriate for the content and level of detail in the Plan.<sup>19</sup> In my view, it has been prepared in accordance with Regulation 12 of the Regulations.

As an Appropriate Assessment was prepared, I asked CBC to review the work on SEA to see whether this resulted in any implications or need for further work on SEA. With the exception of making reference to the AA when the sustainability statement is produced, CBC consider no further implications arise. I do not disagree with this conclusion.

Therefore EU obligations in respect of SEA have been satisfied.

In reaching this view, I am also mindful that ultimately PPG advises that it is the responsibility of the local planning authority to decide whether the Plan is compatible with EU obligations.<sup>20</sup>

### ***Habitats Regulations Assessment***

Directive 92/43/EEC on the conservation of natural habitats, commonly referred to as the Habitats Directive, is also of relevance to this examination. A Habitats Regulations Assessment (HRA) identifies whether a plan is likely to have a significant effect on a European site, either alone or in combination with other plans or projects.<sup>21</sup> The assessment determines whether significant effects on a European site can be ruled out on the basis of objective information.

A Habitats Screening Assessment Revised June 2017 has been included with the Basic Conditions Statement.<sup>22</sup> This concluded that there would be no significant effects from the Plan in isolation, but that there may be in combination effects as a result of the growth in Colchester and Tendring. It indicated that these had to be assessed at local authority level and that Wivenhoe would be bound by any Recreational disturbance Avoidance and Mitigation Strategy (RAMS) arising from that work. It concluded that a separate full HRA was not required.

A note from CBC<sup>23</sup> explains that “the report identified recreational disturbance as a potential issue and commented that any impact on a Special Protection Area (SPA) will be greatest for the Colne Estuary which lies downstream of the neighbourhood plan area. The screening assessment referred to the observation from Natural England that

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<sup>19</sup> PPG para 030 ref id 11-030-20150209

<sup>20</sup> *Ibid* para 031 ref id 11-031-20150209

<sup>21</sup> *Ibid* para 047 ref id 11-047-20150209

<sup>22</sup> Page 32 of the Basic Conditions Statement

<sup>23</sup> Response from CBC to my letter of 10 July 2018 dated 9 August 2018

the main high tide bird roost lies to the south of Alresford Creek and so is not in close proximity to the footpath. Therefore both in isolation and in combination with other proposals, the housing site allocations...are unlikely to result in detrimental disturbance effects from walkers on the SPA downstream from the settlement.”.

NE agreed that alone there are no likely significant effects. However, NE considered there would be in combination effects.

CBC rescreened the Plan to consider in combination effects in more detail. The principal conclusions are that firstly mechanisms are in place in the ELP to ensure that high levels of open space will be delivered as part of new housing across the Borough. Where necessary, this will be designed and delivered as Suitable Accessible Natural Greenspace (SANG) to alleviate pressure on European sites. Secondly, as a precautionary approach is needed, additional mitigation is required. Alongside Braintree District Council and Tendring District Council, CBC will undertake and implement a Strategic Access Management and Monitoring Strategy (SAMM). This has progressed and CBC has worked with ten other Essex authorities and NE on the RAMS.

The rescreening report concluded there was a high degree of certainty that high levels of green infrastructure will be delivered as part of the proposed garden community, survey and monitoring work showed the majority of visitors to European sites travelled short distances, there is a good track record of joint working to leave no doubt that the SAMM will be delivered.

However, NE considered there was not enough certainty.

CBC has carried out an Appropriate Assessment (AA) of the Section 2 Local Plan. This identified in combination effects with the Section 2 Local Plan allocations, the Wivenhoe Neighbourhood Plan and other local plans across Essex. It recommended implementation of the RAMS, which is included in the Section 2 Local Plan. Work is underway on the RAMS; the RAMS Strategy Document is now complete. It is anticipated consultation on the RAMS will take place in 2019. NE agrees that Section 2 Local Plan will not lead to adverse effects either alone or in combination.

I asked CBC to consider whether there are any implications arising from the judgment in the case of *People Over Wind, Peter Sweetman v Coillte Teoranta*.<sup>24</sup> My letter to CBC is attached at Appendix 3. CBC replied that the AA of the Section 2 Local Plan appraises the proposals in the Plan likely to affect the integrity of the Colne Estuary SPA with the mitigation measures in both Section 2 Local Plan and the Plan.

The Town Council also responded<sup>25</sup> and considered that it is not sensible or feasible for a separate AA to be conducted and that the AA for Section 2 Local Plan should be relied upon. Policy WIV 32 states that any RAMS would apply to development in Wivenhoe.

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<sup>24</sup> Case C-323/17

<sup>25</sup> Letter from Wivenhoe Town Council of 13 July 2018

I have considered the AA of the Section 2 Local Plan. It recommends a number of mitigation measures to be incorporated to the Section 2 Local Plan. It also indicates that the issues will also be considered as part of other documents and that it has focused on key strategic issues.

Last year there was considerable uncertainty over whether neighbourhood plans could undertake AAs. This caused delay for many neighbourhood plans across England and has considerably delayed the progress of this particular Plan. I wrote to CBC on 26 November 2018 to set out an updated position on Habitats Assessment. This letter is attached as Appendix 4.

On 28 December 2018, the basic condition prescribed in Regulation 32 and Schedule 2 (Habitats) of the Neighbourhood Planning (General) Regulations 2012 (as amended) was substituted by a new basic condition brought into force by the Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018. This removed any uncertainty and made it clear that an AA can be carried out. I wrote to CBC on 4 January 2019 setting out this position and the letter is attached as Appendix 5.

CBC has therefore carried out an AA of the Plan. Further consultation with the statutory consultees and the public was carried out between 9 January – 20 February 2019. Three responses were received. Historic England and Highways England offered no specific comments. NE confirmed that the conclusions of the AA were compliant with the European Court cases. It confirmed that as long as the policy for recreational disturbance avoidance and mitigation is included in the Plan, NE concur with the AA's conclusions that there will be no likely significant effects either alone or in combination. The policy is included in the Plan. A note has helpfully been prepared by CBC attached as Appendix 6 which explains the latest position on the RAMS.

National guidance establishes that the ultimate responsibility for determining whether a plan meets EU obligations lies with the local planning authority.<sup>26</sup> CBC has considered the compatibility of the Plan in regard to EU obligations and does not raise any concerns in this regard.

I consider that the requisite requirements have been met and that the prescribed basic condition is complied with.

### ***European Convention on Human Rights (ECHR)***

The Basic Conditions Statement includes a section on this. There is nothing in the Plan that leads me to conclude there is any breach of the Convention or that the Plan is otherwise incompatible with it.

PPG<sup>27</sup> confirms that it is the responsibility of the local planning authority, in this case CBC, to ensure that all the regulations appropriate to the nature and scope of the draft

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<sup>26</sup> PPG para 031 ref id 11-031-20150209

<sup>27</sup> *Ibid* para 031 ref id 11-031-20150209

neighbourhood plan have been met. It is CBC who must decide whether the draft plan is compatible with EU obligations when it takes the decision on whether the plan should proceed to referendum and when it takes the decision on whether or not to make the plan.

## 7.0 Detailed comments on the Plan and its policies

In this section I consider the Plan and its policies against the basic conditions. Where modifications are recommended they appear in **bold text**. As a reminder, where I have suggested specific changes to the wording of the policies or new wording these appear in ***bold italics***.

The Plan has an eye catching front cover, is presented to a good standard and has a helpful contents page.

### 1 A Brief Summary of this Document

This well written and helpful section is a useful lead in to the Plan. Whilst it is not a modification I need to make in respect of my role, I suggest that the first paragraph in italics will need some natural updating as the Plan progresses towards being made.

The second paragraph refers to how the Plan will be used, but it is important that the development plan as a whole is recognised alongside how decisions are made in the planning process. Therefore in the interests of accuracy, a modification is recommended.

- **Change the first sentence of the second paragraph to read: “Once the Wivenhoe Neighbourhood Plan is *adopted*, any planning application for development in the area which goes before *Colchester Borough Council (CBC)* must *be determined in accordance with the planning policies contained in this document and other planning policies which together form the development plan unless other material considerations indicate otherwise.*”**
- **Delete the second sentence of the second paragraph which begins “If not, the planning...”**

### 2 Introduction

Another well written section that gives useful information about the Plan and its evolution signposting the reader to more detailed information elsewhere and its status.

Amongst other things, it explains that the Plan runs until 2032 and cannot be changed without further consultation, examination and referendum. This is not strictly correct



as minor amendments can be made. A modification is therefore suggested in the interests of accuracy.

- **Add the word “*significantly*” to the third sentence in paragraph 2.1 on page 4 of the Plan and delete the words “in any way” so that it reads: “It may be reviewed from time to time during this period, but, once approved, it cannot be *significantly* changed without further public consultation, examination and referendum.”**

### 3 How has this Plan been Created

Setting out the process and signposting further sources of information, this well written section summarises the work to date on the Plan.

It explains that each section of the Plan covers a different topic. Under each heading is a justification and intent for the policies together with a summary of how the policies contribute to the Plan’s objectives. The policies are presented in yellow boxes with community aspirations, or actions, in blue.

### 4 Wivenhoe Neighbourhood Plan Area

Setting out the context for the Plan, this section explains there are three distinct areas of the Plan area; Land north of the A133, University of Essex and Wivenhoe Parish. The Parish area has around 7, 630 people whilst the University area some 2,200 residential students. The land north of the A133 is sparsely populated, but is included in the ELP as a potential area for strategic growth.

There is one minor error to correct.

- **Change “7,637 persons” to “7,629 persons” in paragraph 4.4 on page 7**

### 5 Local Context

This well written section contains a lot of information about the characteristics of the Plan area in a tangible way. It highlights many challenges including the under occupancy of dwellings and a high proportion of residents over 60 years of age.

There is one minor error to correct.

- **Delete the last sentence in paragraph 5.3 on page 8 of the Plan**

## 6 Challenges for Wivenhoe

A short section that summarises the key challenges arising from community engagement.

## 7 Vision and Objectives

This section sets out a vision for Wivenhoe that states:

“By the end of the Plan period, in 2032, Wivenhoe will still be a thriving and vibrant community but will be an even better place in which to live, work and to visit by:

- protecting and enhancing its distinctive character, rich heritage and natural assets such as the river and its rural setting, and those areas which are important to wildlife and biodiversity
- improving access to the river and other countryside areas by people for recreational purposes whilst respecting sensitive environmental habitats
- securing more green spaces
- adding new community facilities
- ensuring traffic flows are improved by creating additional footpaths and cycle-ways in order to encourage sustainable travel modes and ensuring new housing is located in areas which do not significantly impact upon the existing road network in Wivenhoe at peak times
- providing additional homes that will give a better overall mix of housing in Wivenhoe and that will meet the needs of local people.”

The clearly articulated vision is then underpinned by 10 objectives. All relate to the development and use of land and are clearly written.

A table on page 20 of the Plan then shows a variety of infrastructure improvements that are sought from new development. All are locationally specific and it was not clear to me what evidence had informed the table. In response to my query on this, further explanation has been provided and it is clear that all the items have basis in evidence, local knowledge and community feedback and have been thought through.

## 8 Wivenhoe General Development Policies

Paragraph 8.3 refers to Section 18 of the Plan, but it is now Section 19 that contains the Proposals Maps. In the interests of accuracy, a modification is made to correct this.

- **Change “Section 18” in paragraph 8.3 to “Section 19” on page 21 of the Plan**

## Policy WIV 1 Wivenhoe Town Settlement Boundary

This policy refers to a proposed settlement boundary for the Wivenhoe Parish area. This is a newly defined boundary which includes the sites proposed in the Plan. CBC confirm that it is consistent with the proposed settlement boundary in the ELP and I saw at my site visit it is defined pragmatically.

The policy itself refers to the need for development proposals to be guided by policies in the development plan (CBC level policies and Plan policies) in a number of places. This is unnecessary as all proposals need to be assessed against relevant policies in the development plan (which often consists of more than one plan document).

The remainder of the policy is clearly written, but because of the policy's title and need to define the settlement boundary and because the policy now only refers to development outside the settlement boundary, further modifications are needed to ensure a practical framework for decision making as sought by national policy and guidance is provided.

Therefore the policy is separated into two.

- **Separate Policy WIV 1 into two new policies. The first policy designates the new settlement boundary for Wivenhoe Town and reads: *"A Settlement Boundary for Wivenhoe Town is designated and identified on the Wivenhoe Proposals Map."***
- **The second policy begins at existing criterion ii) with some additional text and reads: *"Except where supported by other policies in the development plan, development outside the Settlement Boundary, as identified on the Wivenhoe Proposals Map, should:"***
- **Retain existing criteria ii) i., iii., iv., v., vi., vii., viii. [criterion ii) ii. and ix. are deleted]**
- **Ensure that the Proposals Maps refer to "Settlement Boundary"**

## Policy WIV 2 Development within the Wivenhoe Neighbourhood Plan area to the north of the A133

The Plan explains that this area of land is a potential area for strategic growth. There is a general concern that such development might affect the separation of Wivenhoe from Colchester, lead to increased traffic and congestion and affect the availability of school places. Therefore Policy WIV 2 seeks to ensure that any development within this area must provide school, health and community facilities to serve the new community at an early stage.

The policy then rather assumes that the area will be developed at a strategic level and could be seen to be accepting development when it may not go ahead. Whilst I note CBC does not raise any objection to it, a modification is made to address these concerns.

A further modification is made to ensure that rather than at an early stage, the requisite infrastructure is provided at an appropriate time. This will help to ensure that the viability of any development is not threatened.

- **Change Policy WIV 2 to read: “Any strategic housing or other large-scale development within the Wivenhoe Neighbourhood Plan area to the north of the A133 must provide adequate school, health and other community facilities on the site at an *appropriate* stage to serve this *proposed* new community to mitigate any impact resulting from large-scale development on the services and facilities in Wivenhoe.”**

## 9 Countryside and the Environment

### *Landscape Character*

This section describes the landscape character area.

### *Settlement Coalescence and Rural Approach to Wivenhoe*

The second part of this section begins with a discussion of retaining the separate identity of Wivenhoe. To this end, two actions and one policy are included.

The first action seeks to ensure a strip of land adjacent to the A133 is planted as a tree belt. The second action confirms the Town Council’s support for an extension of the Salary Brook nature reserve to provide a green break between Greenstead and Longridge Park and any new development east of this land. The second action is worded as an action, but the first is not; it reads more as a policy. To ensure there is clarity, a modification to the first action is suggested.

### Policy WIV 3 Settlement Coalescence

Policy WIV 3 seeks to retain physical separation between Wivenhoe settlement and the University of Essex campus. The area is shown on Figure 12 and repeated on the Proposals Maps. There is sufficient justification for seeking to ensure that any development in this area does not result in an undesirable reduction or loss of separate and distinctive identity between Wivenhoe settlement and the Campus. CS Policy ENV1 also seeks to protect open stretches of countryside around and between settlements to protect coalescence and retain settlement identity.

However, the wording of the policy is not sufficiently clear. It would also clearly be unreasonable to impose a 'blanket' ban on any development. In addition there is not enough information or evidence to support the inclusion of concern about development within Tendring District and the areas of concern are not discussed in any detail. As a result, a modification to the policy is recommended to tie the policy and Figure 12 together in the interests of clarity, to make the policy more flexible whilst retaining its ability to resist inappropriate development and to remove any references to those parts of the policy that are not sufficiently justified.

Furthermore, I do find it confusing that Figure 12 on page 25 of the Plan does not illustrate all three areas; it only illustrates two. Furthermore it illustrates one that is the subject of an action and one subject to the policy. This is confusing and does not provide the practical framework for decision making sought by national policy and guidance.

In fact it elevates one of the actions onto the Proposals Map which also shows the information that appears on Figure 12. I consider it inappropriate that actions are shown on the Proposals Map (although they could be shown on a clearly defined and separate actions map).

Figure 12 also shows part of one of the site allocation sites (Policy WIV 30) as part of the proposed coalescence break. The Town Council has suggested this should be corrected and I agree.

Finally, the language used should be consistent to avoid the potential for confusion.

Therefore modifications are made to address these concerns.

- **Amend the action point on page 24 of the Plan to read:**

***"If land to the north of the A133 is to be developed, the Town Council will work with Colchester Borough Council and anyone else involved in the planning of development in this location to seek to secure a strip of land adjacent to the A133 is planted as a tree belt of approximately 30 metres wide to preserve the rural approach to Wivenhoe and to be a green corridor for the benefit of wildlife."***

- **Delete the area shown as the "Coalescence Break" at Salary Brook from Figure 12 and any corresponding maps and figures including Proposals Map 1**
- **Amend the "Coalescence Break" to remove that part of it which is subject to Policy WIV 30**
- **Change paragraph 9.10 on page 25 of the Plan to read: "The following map (Fig.12) shows the proposed *Coalescence Break between Wivenhoe settlement area and the University on either side of Colchester Road. This is also shown on the Proposals Map.*"**

- **Change Policy WIV 3 to read:**

***“All development proposals within the Coalescence Break illustrated on Figure 12 and the Proposals Map should satisfactorily demonstrate that they will not unduly reduce the physical and visual separation between, or contribute to the coalescence of, the Wivenhoe settlement with the University of Essex campus.”***

### ***Protecting the Setting of the River Colne***

#### **Policy WIV 4 Protecting the Setting of the River**

This policy seeks to protect the setting of the River Colne and important vistas. It seeks to designate an area which is based on the Coastal Protection Belt (CPB) defined in the LP 2001 - 2021. As part of the work on the ELP, the extent of the CPB was reviewed. This designation therefore is based on that evidence. To avoid confusion, CBC and the Town Council have agreed that the name of the designated area should be changed. I agree this would help with clarity and accordingly a modification is made.

Otherwise, the policy is worded clearly. It will ensure that the setting of the River is protected from development that might adversely harm its important attributes and characteristics which are clearly valued by the community. It will reinforce local distinctiveness and maintain the character of this distinctive part of the Plan area ensuring enjoyment of it for the community and visitors alike. It reflects CS Policy ENV1. It will help to achieve sustainable development.

- **Change the first sentence of the policy to read: “Countryside that contributes vistas of high value towards the River Colne and its estuary, or that can be clearly viewed from the river or land on the Rowhedge and Fingringhoe side of the river *and which is shown on Figure 14 and the Proposals Map as the River Colne Special Character Area* should be protected from development which significantly detracts from these vistas or views.”**
- **Change the Proposals Map and Figure 14 designation from “Colne Protection Belt” to “River Colne Special Character Area”**

### ***Former University Expansion Land***

The next section of the Plan explains that following discussions with CBC and the University, it has been agreed that an existing designation in the LP to expand the University Campus on land south and west of Boundary Road could be removed. This constitutes an action on page 33 of the Plan. It is not a planning policy and therefore the action can only express the Town Council’s support for this change in designation. The Plan recognises that Policies WIV 3 and WIV 4 affect at least some of this land.

To this end, modifications are made to align with the earlier changes suggested and to ensure the action reads as an action and does not, however inadvertently, read as policy and that the supporting text also reflects this.

- Add the words “(although it is proposed to remove this allocation in the emerging Local Plan)” after “...Boundary Road...” in the first paragraph of paragraph 9.17 on page 32 of the Plan
- Change the second paragraph of paragraph 9.17 on page 32 of the Plan to read:

*“Whilst the development of the Campus is constrained by a number of environmental and heritage issues, the University is of the view that it should be able to accommodate its growth needs, up to 2024 / 2025, within its existing land ownership. However, beyond that date, it is likely that it will need to expand beyond its current boundaries. Discussions with the University have revealed that it is willing to forgo the expansion allocation, as set out in the adopted Colchester Local Plan 2001 - 2021, provided that an appropriate, replacement, allocation is made. Therefore, in agreement with the University and Colchester Borough Council, the Town Council supports the removal of this designation from the adopted Colchester Borough Local Plan 2001 – 2021 and the identification of a replacement allocation in the emerging Local Plans or any subsequent Strategic Growth DPD relating to the proposed Tendring Colchester Borders Garden Community (see para 13.12). The current University expansion designation is referenced in the adopted Core Strategy as a proposed development in the East Colchester Growth Area and specifically in the Site Allocations DPD under Policy EC7. Following the removal of this proposed expansion site, the land should revert to protection from inappropriate development in accordance with Policies WIV3 and WIV4 of the Wivenhoe Neighbourhood Plan relating to settlement separation and landscape impact, respectively.”*

- Change the action on page 33 of the Plan to read: *“The Town Council supports the proposal in the emerging Local Plan to remove the designation of land for University expansion to the south and west of Boundary Road as shown on the Borough Council’s Proposals Map in the current adopted Local Plan 2001 - 2021.”*
- Remove the title for the action in line with the other actions to be found throughout the Plan

## ***Protecting Areas Important to Wildlife and Biodiversity***

### **Policy WIV 5 University Marshes**

This is a short policy that protects a Local Wildlife Site from development. It also contributes to the Green Corridor between the Wivenhoe settlement and Colchester. The policy protects this area from development.

The NPPF<sup>28</sup> is clear that the planning system should contribute to and enhance the natural and local environment. The policy is clearly worded and meets the basic conditions. No modifications are therefore recommended.

An action then follows about Ferry Marsh. It again needs amendment so that it reads as an action rather than a policy.

- ***Change the action on page 38 of the Plan to read: “The Town Council would support the designation of the whole of Ferry Marsh as indicated on Figure 19 as a nature reserve.”***

### ***The River Colne and Access to it***

This section starts with an action on page 39 that is clearly worded.

### **Policy WIV 6 Access to the River Colne**

Policy WIV 6 seeks to protect and enhance access to the River Colne. It will help to achieve sustainable development. It meets the basic conditions and no modifications to it are recommended.

### ***Trees in the Neighbourhood Plan Area***

An action on page 40 of the Plan seeks to appoint tree wardens. It is clearly worded.

## **10 Recreation and Open Spaces, Play Areas, Sports Fields and Allotments**

This section begins by referring to DPDPD Policy DP15, but only partially quotes from it. This Borough level policy identifies areas of open space, sports grounds, playing field and allotments on its Proposals Map. The Plan identifies these areas in Figure 21 and Table 2, but adds to them following engagement with the community and removes two areas of open space (which are subject to Policies WIV 28 and WIV 29). The Plan indicates that these amendments align with the ELP.

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<sup>28</sup> NPPF para 109



Paragraph 10.2 on page 41 indicates that additions to the “Borough list” are shown in bold; this is not the case although the additions are clearly identified. In the interests of accuracy, this sentence should be amended.

- **Insert the full policy if quoted and reproduced [DPDPD Policy DP15 on page 41 of the Plan]**
- **Change the last sentence in paragraph 10.2 to read: “Additions to the Borough list are *indicated in Table 2.*”**

### **Policy WIV 7 Protection of Open Spaces, Play Areas, Sports Fields & Allotments**

This policy seeks to resist the loss of such areas shown on the Proposals Map unless the proposal would not result in the loss of an important area for its amenity and character and appropriate alternative provision is provided.

This reflects the stance of the NPPF in promoting healthy communities,<sup>29</sup> CS Policy PR1 which refers to the provision of open space and DPDPD Policy DP15. However, the policy is not based on needs as referred to in the NPPF. This should be incorporated into the policy to ensure that it meets the basic conditions.

In addition Essex County Council raise concern over the inclusion of the Millfields School and Broomgrove School as this may hinder the schools’ ability to expand. The Town Council accept this and have suggested a new criterion which I consider would address this point.

There is also a correction in the interests of accuracy.

- **Change “(Section 19)” in the first sentence of the policy to “*Figure 21*”**
- **Add the words “*one of the following circumstances applies*” at the end of criterion (i) of the policy**
- **Add an “*or*” at the end of criterion (ii) in the policy**
- **Add a third criterion to the policy that reads: “*(iii) an assessment of the open space or playing field has been undertaken and this clearly shows the area to be surplus to requirements or.*”**
- **Add a fourth criterion to the policy that reads: “*In the case of the school playing fields at Broomgrove School and Millfields School the land is required for school expansion.*”**

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<sup>29</sup> NPPF para 74

## ***Additional Play Areas, Sports Fields and Allotments***

### **Policy WIV 8 Provision of Additional Sports Pitches, Play Areas & Allotments**

The Plan explains there is a waiting list for allotments and a need for improved play areas and sports pitches.

The first element of Policy WIV 8 supports development proposals that contribute to the cost of providing additional sports facilities in Wivenhoe Parish. This may inadvertently support otherwise unacceptable proposals and so a modification is made to address this concern.

In addition the policy's title and supporting explanation go beyond just sports facilities and so a modification is made to provide flexibility and align the policy with its justification.

A second element of the policy supports development of 25 or more dwellings providing amenity space of at least 10% of the site area. There is no reference in the Plan to such provision. It is not referred to in the section heading or title of the policy. There is therefore no explanation or justification for it presented in the Plan and as a result this element should be deleted. Although I am informed by the Town Council that this relates to a CBC level policy, I cannot find one in any adopted plan that says the same thing. In any case, if the point is covered in a CBC level policy, there is no need to duplicate that in the Plan.

- **Add the words “*Otherwise acceptable*” at the start of the first sentence of the policy**
- **Add the words “/recreation land and / or facilities” after “...sports...” in the first sentence of the policy**
- **Delete criterion (ii) of the policy**
- **Change the presentation of the policy so that it does not have one criterion and delete the word “and” from the end of the existing criterion (I)**

## ***Local Green Spaces***

Two Local Green Spaces (LGS) are proposed by this policy.

The NPPF explains that LGSs are green areas of particular importance to local communities.<sup>30</sup> The effect of such a designation is that new development will be ruled out other than in very special circumstances. Identifying such areas should be consistent with local planning of sustainable development and complement investment.

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<sup>30</sup> NPPF paras 76, 77 and 78

The NPPF makes it clear that this designation will not be appropriate for most green areas or open space. Further guidance about LGSs is given in PPG.

The two proposed areas, Ferry Marsh and open area opposite Millfields School are shown clearly on Figures 22 and 23 on pages 46 and 48 of the Plan respectively.

I visited both areas on my site visit.

**Ferry Marsh** is a designated Local Wildlife Site adjacent to a Site of Special Scientific Interest (SSSI). It is valued by the community for its recreational opportunities, for its views and vistas and for its wildlife.

**Open area opposite Millfields School** is valued by the community as an open space. The site has been subject of development proposals in the past, but was originally a green amenity area for the Dene Park estate. It is an open grassed area with seating adjacent to a footpath and providing a setting for that footpath and open to the road providing a setting to Millfields Primary School.

In my view, the proposed LGSs are sensibly and clearly defined. All are in reasonably close proximity to the community they serve, are local in character and are not extensive tracts of land and hold a particular local significance meeting the criteria in the NPPF satisfactorily.

Now turning to the wording of the policy itself, Policy WIV 9 simply designates both areas cross referencing Figures 22 and 23 sensibly.

The policy meets the basic conditions and no modifications are recommended.

## 11 Heritage and Townscape Policies

### ***Conservation Area***

Two actions on page 50 of the Plan respectively support the extension of the Wivenhoe Conservation Area and the introduction of Article 4 directions. Both are clearly worded.

### ***The Goods Shed***

#### **Policy WIV 10 The Goods Shed, Station Yard, Wivenhoe**

This policy relates to an old railway building that was previously listed, but delisted after severe fire damage. The policy supports appropriate commercial, residential or leisure uses to try and secure its future. Should this not be possible, the policy indicates the building should be removed and the area used for car parking.

Although the building has been delisted, the site falls within a Conservation Area. With some modification in the interests of clarity, I consider that the policy takes a pragmatic approach extending the types of use that might be acceptable to restore the building maximising the opportunity for a viable future for the building. There seems no reason why cultural uses could not be added to this list given plans for a community theatre in the past. This will increase flexibility and maximise the potential and viable reuse of the building.

However, I do not consider it acceptable for the policy to indicate support for the building's removal. At my site visit, I saw that whilst the building is damaged, three sides of it and a gable end remain all supported by scaffolding. The building's size, form and shape are clear. Whilst the building is within an area of car parking for the station, as it is located at the station and close to the railway line, it makes an important contribution to one approach to the village. In addition it is close to the Wivenhoe Trail.

The NPPF<sup>31</sup> is clear that heritage assets are an irreplaceable resource. Therefore there is little justification for this element of the policy and to retain it would not take account of the stance on the historic environment in the NPPF or contribute to the achievement of sustainable development. It would, in my view, however inadvertently, encourage the removal of the building and its replacement with car parking. This, in my view, should be properly considered through a planning application route with the requisite evidence on viability and so on as well as any new or replacement development making a positive contribution to local character and distinctiveness.

With this modification the policy will meet the basic conditions.

- **Change the policy to read: "Development proposals for commercial, residential, *cultural* or leisure uses will be supported *where they protect or enhance* the historical features of the building."**

### ***The Quay***

#### **Policy WIV 11 The Quay at Wivenhoe**

It is recognised that the Quay is a popular area for residents and visitors alike, but there is a need to improve its offer by making it more attractive and function better. Policy WIV 11 sets out support for proposals which will help to achieve this. It is a locally distinctive policy that will help to improve the design and function of the area. It builds on CS Policies UR2 and PR2. As such it will help to achieve sustainable development.

The only modification to it is to include a figure that shows the area the policy relates to. A diagram of the area has been provided in response to my query on this. This should be inserted into the Plan and the policy should make direct reference to it.

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<sup>31</sup> NPPF para 126

- Insert the diagram provided in response to my questions of clarification in relation to this policy identifying it by calling it Figure [X] [Consequential amendments to Figure numbers will be required]
- Insert the words “*as shown on Figure [X]*” after “...(from Bath St to Walter Radcliffe Way)” in the first sentence of the policy

An action that sits comfortably alongside this policy follows. It is clearly worded.

### ***Street Scene***

Recognising there is room for improvement in the street scene, a clearly worded action on page 53 of the Plan supports joint action to investigate possibilities.

### ***Townscape***

A short section describing the evolution of Wivenhoe.

### ***Infill and backland development***

#### **Policy WIV 12 Infill and Backland Development on Garden Sites**

The Plan explains that most infill or windfall opportunities are likely to be garden areas. Policy WIV 12 sets out various criteria to ensure that any such development is appropriate.

The policy refers to the “settlement area”. This is the same as the settlement boundary designated in Policy WIV 1. In the interests of consistency, a modification is made to use this language.

A number of the criteria require some revision.

Criterion iii. refers to the loss of gardens important to the surrounding townscape and I do not consider this to be precise enough. A modification is made to address this concern.

Criterion iv. requires the risk of flooding to surrounding properties to be reduced. This is too onerous and may be unnecessary depending on the location of the site. A modification is made to make this more flexible.

Criterion vi. may inadvertently permit schemes that adversely harm wildlife. A modification is made to address this concern.

Criterion vii. requires a modification to ensure that it reads correctly and is not unduly onerous.

Finally a modification to ensure that all the criteria are followed is needed.

With these modifications, the policy will avoid inappropriate development of residential gardens in line with the NPPF<sup>32</sup> and set out the expectation for the quality of development in line with the NPPF.<sup>33</sup> It will help to achieve sustainable development.

- **Change the words “settlement area” to “*settlement boundary*” in the first and second paragraphs of the policy**
- **Change criterion iii. to read: “Not result in the loss of gardens which are *visually or functionally* important to the surrounding townscape;”**
- **Reword criterion iv. to read: “*Ensure that the risk of surface water and fluvial flooding is not increased on site or to surrounding properties and take every available opportunity to reduce any such risk;*”**
- **Change criterion vi. to read: “Ensure that there is no *adverse* impact on wildlife;”**
- **Change criterion vii. so that it reads: “Include mitigation measures *where appropriate and necessary to do so to prevent any unacceptable* increase in traffic flows on residential streets *as a result of the proposal.*”**
- **Add the words “*must comply with all the following criteria*” after the second paragraph of the [existing] policy that begins “Within the settlement area, proposals...” deleting the word “should”**

### ***Extensions and Conversions***

#### **Policy WIV 13 Townscape Character Conservation**

Although the preamble to the policy refers to extensions and additions, the sub heading also refers to conversions and the policy itself is not clear. The intent of the policy is to ensure that design conserves important features. This is in line with the NPPF which requires good design and will help to retain a strong sense of place and respond to local history and character.<sup>34</sup> It reflects CS Policy SD1 that seeks high standards of design, sustainability and compatibility with local character and CS Policy UR2 which seeks high quality and inclusive design in particular. It will also help to achieve sustainable development. With this modification, the policy will meet the basic conditions.

- **Change the title of the policy to “*Extensions, Additions and Conversions of Residential Properties*”**

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<sup>32</sup> NPPF para 53

<sup>33</sup> *Ibid* para 58

<sup>34</sup> *Ibid* Section 7

- **Reword the policy to read: “Extensions, additions and conversions will be supported where they (i) are designed to conserve townscape features of existing streets and estates where these make a positive contribution and (ii) protect greenswards adjacent to the highways.”**

## 12 Community Wellbeing Policies

### ***Community Facilities and Recreational Provision***

This short section discusses Borough level policy.

#### ***Indoor Venues***

The supporting text to the following two policies explains the context and underprovision of indoor facilities.

#### **Policy WIV 14 New Indoor Community Facilities**

This policy indicates that applicable financial contributions from development sites will be used to provide additional facilities convenient to the settlement area. It should be made clear that such contributions are those required to mitigate any impact from new development. Otherwise the policy provides a clear steer as to what will be supported by the community. It is a local reflection of CS Policy SD3 and DPDPD Policy DP4 and will help to achieve sustainable development.

- **Insert the words “required to mitigate the impact of new” after “Financial contributions...” in the policy**

#### **Policy WIV 15 Indoor Community Facilities**

The first element of this policy supports new facilities. It offers blanket support that may inadvertently support otherwise inappropriate development. A modification is made to address this.

The second element resists the loss of existing facilities subject to various criteria including alternative provision and viability and marketing. It is worded clearly. However, the requirement to market for 18 months is unduly onerous and a modification is made to make this element more flexible.

The third element inadvertently contradicts the second, but it is clear what the intention is and so I am able to recommend a modification to remedy this issue and make the policy more precise.

With these modifications, the policy will make a positive contribution to the promotion of healthy communities as set out in the NPPF,<sup>35</sup> is a local expression of DPDPD Policies DP4 and DP15 and will help to achieve sustainable development.

- Add the words “*otherwise acceptable*” before “...provision of new or improved...” and delete the word “the” before provision in the first element of the policy
- Delete the words “for at least 18 months” from the second paragraph of the policy and replace with “for at least 12 months”
- Change the third paragraph of the policy to read: “Proposals *that would result in the loss of indoor community facilities will only be permitted if equivalent facilities are provided or there is evidence that the facility is surplus to requirements or no longer viable. Any alternative facilities must comply with the following criteria:*” [retain the three criterion as existing]

### **Education**

A short section on education.

### **Health**

A short section on health.

## **13 The University of Essex**

### **Policy WIV 16 The University of Essex**

The supporting text recognises the contribution the University makes to the community both as a source of employment, pride and for sharing its facilities.

Policy WIV 16 seeks to support the growth of the University in its campus area and the Knowledge Gateway Business Park as long as new development does “not adversely harm the existing residents of Wivenhoe”. It would be extraordinarily difficult for any applicant to know how to comply with this policy. It would be equally difficult for a decision maker to make this judgment. In any case, I suspect that harm to one resident may not be harm to another.

A second element of the policy seeks to particularly support proposals that “improve the relationship between the University and existing residents”. This too is imprecise.

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<sup>35</sup> NPPF Section 8



Whilst I recognise the intent of the policy, it is too imprecise and does not provide the practical framework for decision making sought by national policy and guidance. As a result it should be deleted. Consequential amendment is also required as paragraph 13.14 therefore becomes inaccurate.

Revised wording has also been put forward in respect of paragraph 13.12 on page 59. This more accurately reflects the up to date situation.

An action on page 59 of the Plan refers to the Town Council's support for zoning some of the land north of the A133 for academic use and Knowledge Gateway expansion. It seeks to replace the provision lost as a result of 'dezoning' the area south and west of Boundary Road. Whilst the action can express the position of the Town Council, these are clearly development and use of land matters. This needs amendment to make clear the status of the action point. The second point of the action duplicates that action point on page 33 of the Plan and so is unnecessary.

- **Delete Policy WIV 16 in its entirety**
- **Delete the first sentence of paragraph 13.14 on page 59 of the Plan**
- **Reword paragraph 13.12 on page 59 of the Plan to read:**

***“Whilst it is expected that the growth of the University will largely be accommodated on land already owned by the University up to 2024 / 2025, it will need to expand beyond the boundaries of Wivenhoe Park at some point in the future. A new allocation for University expansion is likely to be identified as part of the new garden community or as a direct land allocation in the emerging Colchester and / or Tendring Local Plans. The Town Council will work with the University and Colchester and Tendring Councils to agree an approach to the University's long term expansion.”***

- **Reword the action on page 59 of the Plan to read: “The Town Council supports the consideration of land on the north side of the A133 for University expansion and/or Knowledge Gateway expansion.” [this replaces both existing parts 1. and 2.]**

## **14 Getting Around Wivenhoe**

### ***Cars and Traffic***

There are two actions on page 60 of the Plan. The first seeks to encourage action to reduce the impact of traffic on the A133 and surrounding roads. In common with some of the other actions, it is implicit that the Town Council will action this, but in fact this would be difficult to do. To make the action clearer and to avoid confusion between policy, a modification is recommended to reword the action.

The second action is clearly worded.

- **Reword the first action on page 60 of the Plan to read: “*The Town Council will work with appropriate partners to seek road improvements and traffic management measures with a view to reducing the impact of increased traffic on the A133 and surrounding road network.*”**

#### **Policy WIV 17 Traffic in Wivenhoe**

This policy seeks to ensure that any traffic impact from new development is acceptable. This is in line with the promotion of sustainable transport in the NPPF<sup>36</sup> and will help to achieve sustainable development.

With some revision to the wording to make the policy clearer so that it provides the practical framework for decision making sought by national policy and guidance, the policy will meet the basic conditions. This also includes making the language consistent to refer to the settlement boundary in line with earlier recommendations.

- **Reword criterion (I) of Policy WIV 17 to read: “(i) *it is demonstrated that there will not be any significant or adverse increase in traffic within the Wivenhoe Settlement Boundary; and*”**

#### ***Walking and Cycling***

#### **Policy WIV 18 Improvements to Pedestrian and Cycle Provision**

Policy WIV 18 seeks to ensure that all new development provides improvements to the existing foot and cycle path networks. It is clearly worded. It meets the basic conditions in that it promotes sustainable transport in line with the NPPF,<sup>37</sup> is a local expression of CS Policy TA2 and will help to achieve sustainable development. It therefore meets the basic conditions and no modifications are recommended.

The remainder of this section contains two actions.

Figure 28 on page 62 of the Plan shows three existing cyclepaths and two potential routes. An action on page 63 of the Plan refers to one of the potential routes. It is appropriately worded.

The second action on page 64 of the Plan refers to the Wivenhoe Trail. The action needs some revision to ensure that it is clear that it is not a statement of policy.

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<sup>36</sup> NPPF Section 4

<sup>37</sup> *Ibid* Section 4

- Amend the first sentence of the action on page 64 of the Plan to read: ***“Given the importance of the Wivenhoe Trail, the Town Council will take action to try and ensure that:”***

## 15 Employment Policies

### Policy WIV 19 General Employment

The Plan explains that it wants to support employment. This policy supports the conversion of employment premises into residential properties subject to a number of criteria. The criteria are designed to avoid the loss of employment sites, but take a common sense approach. The policy is clearly worded and will achieve the aims of the Plan. It supports economic growth and will help to achieve sustainable development.

A number of modifications are made to enhance clarity, consistency and flexibility. In particular some flexibility is needed to ensure that employments sites are not protected in the long term where there is no reasonable prospect of the site being used for that purpose as indicated by the NPPF.<sup>38</sup>

- Change the word “present” in the first sentence of the policy to ***“existing”***
- Add the words ***“, the detailed content of both reports to be agreed with the Local Planning Authority”*** after ***“...a marketing campaign...”*** in criterion ii)
- Add the words ***“or any other agreed timescale as appropriate but not usually less than the 12 month period”*** at the end of the first paragraph of criterion ii)
- Change the words “Settlement area” to ***“Settlement Boundary”*** in the second paragraph of criterion ii)
- Add the words ***“for employment use”*** after ***“...as well as on sites...”*** in the second paragraph of criterion ii)

### ***Employment Zones***

### Policy WIV 20 The Brook Street Business Centre

The Plan recognises the business centre at Brook Street in Wivenhoe as an important source of employment and for its contribution to the vitality of the town. Policy WIV 20 seeks to designate the site as an employment zone. I saw at my site visit that this was a site with low key buildings and car parking. It housed a variety of units.

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<sup>38</sup> NPPF para 22

CS Policy CE3 refers to employment zones including local employment zones based on existing and proposed concentrations of local employment and enterprise and so this designation reflects a principle at strategic level.

The site is shown on Figure 29 and it would be useful to reference this in the policy. A modification is made to action this together with other minor word changes in the interests of clarity.

- **Add the words “*as shown on Figure 23*” after “The Business Centre at Brook Street...” in the policy**
- **Delete the words “must be” from the policy replacing them with “is”**
- **Add at the end of the policy “*and as such will be safeguarded for employment uses.*”**

### ***Cedric’s Garage***

#### **Policy WIV 21 Cedric’s Site**

The Plan explains that a car repair workshop, servicing and MOT station has long been established on the site and more recently a car valeting business has also commenced. However, there is extant planning permission for the redevelopment of the site into residential use.

I saw at my visit that the site lies in a predominately residential area, but is opposite some commercial development including the Coop. In my view the site is suitable for either a residential scheme or a mixed use scheme in land use terms. I note that SADPD Policy SA H1 allocates the site for predominately residential development too.

The policy seeks to ensure that any redevelopment scheme is appropriate with regard to design and layout. It encourages a mix of uses. The owner of the site has indicated concern about this firstly given the extant permission for solely residential development and secondly about viability.

Therefore some modification to the policy and its supporting text is required to increase flexibility and to recognise the extant permission. The elements of the policy which encourage appropriate uses and sympathetic design on this site align with the NPPF, CS Policy UR2 in particular and will help to achieve sustainable development.

A modification is also made to suggest that the site is shown on a Figure and the Proposals Map.

- **Change the second sentence of the policy to read: “*Proposals for a mix of uses are particularly encouraged by the community.*”**

- Insert a Figure [X] into the Plan to show the location and extent of this site and amend the Proposals Map [consequential amendments to Figures etc. may be needed]
- Change paragraph 15.12 to read: *“The community would favour a carefully and sensitively designed scheme which could provide Wivenhoe with a mixture of business and residential accommodation at what could be a new ‘heart’ for Wivenhoe and a place for people to live, work and shop.”*
- Change paragraph 15.13 to read: *“Whilst the extant permission for residential development is recognised, this site could, in the community’s view, accommodate three-storey flats...”* [retain as existing]

### ***A New Commercial and Light Industrial Centre for Wivenhoe***

#### **Policy WIV 22 A Commercial/Light Industrial Business Centre**

A new office/light industrial site is supported on a two hectare site off Keelars Lane. The Plan explains that it wishes to support more local employment opportunities. The site is shown indicatively on Figure 30 and the Plan explains that the precise area will need to be subject to negotiation with the landowner. Policy WIV 22 simply supports a two hectare site off Keelars Lane.

I have considered whether the policy is precise enough to provide a practical framework for decision making. It is clear that the area shown on Figure 30 is indicative. The supporting text sets the scene well. The NPPF seeks to secure economic growth. CS Policy CE1 also encourages economic development. Landowner support is also forthcoming. Therefore on balance, the policy does meet the basic conditions and no modifications to it are made.

## **16 Housing Policies**

Although the introductory sections of this chapter do not contain any policies or actions, they include a number of bullet points that might be construed as statements of policy. In response to my query on this, the Town Council has suggested inserting a sentence into the supporting text. I agree this would assist with clarity.

In paragraph 16.5, a reference is made to the Code for Sustainable Homes. This has now been withdrawn by the Government and so needs to be deleted in the interests of accuracy and replaced by more current information.

The Town Council also point out a presentational error in relation to paragraph 16.12. The third bullet point should be a sentence rather than a bullet point. This further helps to add clarity.

- Insert at the end of paragraph 16.3 on page 69 of the Plan: ***“The sentences which follow in bold text are intended to assist with the interpretation of Policies WIV 23, WIV 24, WIV 25, WIV 26 and WIV 27.”***
- Delete the words “...to aim for Code Level 6 of the Code for Sustainable Homes” in the first bullet point of paragraph 16.5 on page 69 of the Plan and substitute the words ***“should be in line with Building Regulations with the aim to be zero carbon and to meet Lifetime Homes Standard”***
- Change the third bullet point in paragraph 16.12 on page 70 of the Plan into a sentence

### ***Extra Homes in the Wivenhoe Parish Area***

#### **Policy WIV 23 Additional Dwellings in the Wivenhoe Parish**

This policy supports 250 new dwellings on four sites which are allocated in the Plan together with windfalls on sites within the settlement boundary. The wording of the policy should not explicitly or implicitly impose any maximum housing number or preclude further development. A modification is made to address this concern. With this modification the policy will help to contribute to the supply of housing and to help achieve sustainable development.

- Add the word ***“around”*** after ***“...with a cumulative capacity of...”*** to the policy

#### **Policy WIV 24 New Infrastructure**

This policy seeks to ensure that any new residential development provides the requisite local infrastructure it needs. The premise of the NPPF is to provide viable infrastructure that development needs. It reflects CS Policy SD2 which seeks to ensure that new development will be required to provide facilities and infrastructure arising from the proposal. This policy will therefore help to achieve sustainable development. Some modification is needed to help with clarity, flexibility and to address some presentational matters.

- Change the policy to read: ***“Proposals for new residential development ***should provide evidence*** that local infrastructure will be provided and/or improved relative to the size and scale of the development proposed. This requirement will apply to all infrastructure, including education provision and flood prevention (fluvial, sea and surface water).”***

### ***Housing Mix Appropriate for the Needs of All Residents***

Recognising the need for smaller homes for both younger buyers and those looking to downsize, the Plan seeks a mix of housing.

### ***Types of New Homes***

The Plan sets out in tabular form on page 71 the number of homes it seeks for older people and by bedroom number. The total amounts to 250 which is the cumulative figure supported by Policy WIV 23 for additional dwellings in the Parish across the four proposed sites allocated later in the Plan.

### ***Residential Care Home***

#### **Policy WIV 25 Residential Care Home**

The Plan identifies a lack of facilities for older people and those requiring care. Policy WIV 25 therefore supports a care home within the Plan area. This is a simple and short policy that sends a clear signal about the support for such a use. Such a statement reflects the encouragement in CS Policy ENV2 to rural communities to plan for the specific needs of their communities.

However, given that the policy simply supports such provision anywhere in the Plan area, this may inadvertently result in otherwise unacceptable development being permitted. The policy therefore needs revision to ensure that it meets the basic conditions and in particular will help to achieve sustainable development.

- **Add at the end of the first sentence: “*on appropriate sites.*”**

### ***Climate Change and Flood Risk***

#### **Policy WIV 26 Flooding Risk and Climate Resilience**

Policy WIV 26 seeks to achieve a number of things. It supports development per se that meets the various elements. The wording of the policy needs amendment to ensure that it is clear and provides the practical framework sought by national policy and guidance. In particular it requires amendment to ensure that blanket support for otherwise unacceptable development is not given. Additionally it refers to technology and neighbourhood plans cannot impose technical standards, but it can encourage them.

With these modifications, the policy will meet the basic conditions.

- **Change Policy WIV 26 so that it reads:**

***“New development should:***

- (i) be located to minimise the risk of fluvial and surface water flooding; and***
- (ii) provide, wherever possible and appropriate to do so, sustainable drainage, as outlined in the Essex County Council SuDs Guide (or any successor document). Wherever possible this should be designed using above ground drainage features to help ensure robust treatment to improve the quality of water entering into local water bodies. The system should also promote wildlife habitats as well as green and blue corridors; and***
- (iii) maximise the use of permeable surfaces wherever possible; and***
- (iv) is encouraged to incorporate, at the build stage, technologies such as solar panels, which reduce reliance on fossil fuels.”***

### ***Design and Access***

#### **Policy WIV 27 Design and Access**

This policy seeks proposals requiring a Design and Access Statement to meet ten criteria. The policy sets out the expectations for such development and will help to ensure that development is of a high quality. This is in line with the NPPF’s promotion of good design and reflects CS Policies SD1 and UR2 and DPD Policy DP1 in particular.

Some changes to the criteria are needed to ensure that the policy meets the basic conditions insofar as it should provide the practical framework for decision making required by national policy and guidance, be flexible and not include any technical standards. Subject to these modifications, the policy will meet the basic conditions.

- **Delete criterion i.**
- **Delete the word “interior” from criterion iv.**
- **Change the words “the physically disabled” to “people with disabilities” in criterion vi.**
- **Delete the word “personal” from criterion vii.**

### ***Community Benefits from Residential Development***

This section leads into the next section which contains the site allocation policies.

#### **17 Site Allocations for Residential Development**

The Plan relies on CBC level work in relation to a ‘Call for Sites’ alongside those sites promoted directly to the Steering Group by the development industry. Seven sites in CBC’s ‘Call for Sites’ fall within the Plan area. The preamble explains that all sites have



been assessed using a standard set of criteria. All undeveloped land was also evaluated in relation to its potential suitability for housing development. Land north of the A133 was not considered by the Steering Group as this forms part of a strategic site at CBC level.

The Plan explains that two of the six sites were rejected. Out of the remaining four sites, all are put forward for development but only one site as put forward by the developer. In other words, three sites are put forward but not on the same terms as put forward by the developer. All six sites are shown on Figure 31 on page 77 of the Plan.

Paragraph 17.13 refers to a maximum housing figure. This should be changed to increase flexibility and ensure a cap is not imposed.

- **Change the words “A maximum of 250 new dwellings...” in paragraph 17.13 on page 77 of the Plan to “Around 250 new dwellings...”**

#### **Policy WIV 28 Land off Croquet Gardens**

This site is allocated for 25 dwellings and a care home. This is part of a much larger site because the whole site is currently designated as Open Space in the SA 2010 and the area north of the proposed allocation is proposed as Open Space in the ELP.

The site falls within a Mineral Safeguarding Zone. The Plan explains that early consultation with Essex County Council will be necessary to make sure that any development does not prejudice the continued use of the Quarry site. Essex County Council have not raised any concerns regarding any implications.

The landowner has put forward an outline plan for the larger site which is shown as Figure 33 on page 79 of the Plan. As part of the discussions, 2 acres of land for allotments and a small area for car parking will be gifted to the Town Council and cyclepath and footway links provided.

The policy itself only allocates the smaller area of the site for 25 dwellings and a care home as shown on Figure 32 on page 78 of the Plan. It specifies 12 criteria.

The policy should not impose a cap on development numbers. This is because any scheme should be design-led and land used effectively and efficiently. More detailed work may result in less than 25 units coming forward, but equally a handful more may result in a higher quality scheme.

In addition, some criteria require revision so that the practical framework for decision making is provided in line with national policy and guidance.

Subject to these modifications, the policy will take account of national policy and guidance, generally conform to borough level policies and in particular CS Policies H3 which supports housing diversity and, amongst other things, expects developments to

provide homes that are suitable to meet the needs of older people and will help to achieve sustainable development.

▪ **Amend the policy to read:**

**“An area of 1.35 hectares lying behind Croquet Gardens shown in Figure 32 is allocated for *a minimum of 25* residential dwellings and for a residential care home subject to the following conditions:**

- (i) *all* dwellings to each be of *three* bedrooms or less, and suitable for occupation by older people; and**
- (ii) the overall design of the scheme *should* demonstrate *how* it will address the needs of older people; and**
- (iii) 20% of all properties *should be* affordable housing *or* that percentage relevant under *national or* Borough policies at the time the planning application is submitted *subject to viability considerations*; and**
- (iv) the development *should be appropriately designed to minimise any harmful* impacts arising from the Wivenhoe Quarry operations by means of suitable mitigation measures *recognising this is an existing operation*; and**
- (v) *suitable landscaping should be provided* on the western boundaries of the site in order to ensure that development is well screened from existing properties there; and**
- (vi) protective netting to be erected alongside the boundary with the Cricket Club that is suitably high to protect members of the public from stray cricket balls from the cricket ground; and**
- (vii) that it can be demonstrated that development will not have a detrimental impact on wildlife, as evidenced through a wildlife survey; and**

***As shown on Figure 33:***

- (viii) 0.8 hectares (2 acres) of land to be *gifted* to Wivenhoe Town Council for new allotments adjacent to the existing allotments and backing on to the gardens of the properties in Field Way; and**
- (ix) the layout to provide:**
  - a) all-weather footpaths and cycle tracks from Croquet Gardens to The Cross, and to the boundary with the Quarry site; and**
  - b) a shared-use footpath and cycle track linking The Cross to the land in the north owned by Colchester Borough Council; and**
- (x) a small area of land to be provided suitable for the informal parking of up to 20 cars for people to access the meadow behind the Cricket Club; and**
- (xi) existing public and permissive rights of way to be maintained across the meadow; and**
- (xii) contributions towards open spaces, sports, recreational facilities and community facilities shall be required in line with Borough Policies current at the time any application for planning permission is made.”**

## ***Land behind Broadfields***

### **Policy WIV 29 Land behind Broadfields**

The land promoted is currently designated as public open space and a Local Wildlife Site. The Plan explains that the loss of some existing public open space land will be compensated by an area of some two hectares which will be used for playing fields. The policy refers to a smaller segment of the land of 4.06 hectares. This land is shown on Figure 35 on page 82 of the Plan. I did not find Figure 35 particularly clear and so the Town Council has produced a clearer figure in response to my query and this should be substituted for Figure 35.

In addition paragraph 17.36 repeats an earlier paragraph 17.32, both on page 83 of the Plan.

Paragraph 17.41 refers to types of homes specified in paragraphs 16.30 to 16.36. These paragraphs should be 16.25 to 16.31.

Similar issues arise in this policy as in the previous Policy WIV 28. For the same reasons a number of modifications to the policy are made.

With these modifications, the policy will take account of national policy and guidance, generally conform to borough level policies and in particular CS Policy H3 and will help to achieve sustainable development.

- **Substitute the new figure provided in response to my questions of clarification for Figure 35 on page 82 of the Plan**
- **Delete paragraph 17.36 on page 83 of the Plan**
- **Change the reference to “...paragraphs 16.30 to 16.36” in paragraph 17.41 to “...paragraphs 16.25 to 16.31”**
- **Change the policy to read:**

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

- (i) a minimum of 45 dwellings shall be provided with one or two bedrooms which *should* be designed as homes *suitable* for older people, *single* people, or for young couples. They could be bungalows, terraced properties or apartments; and**
- (ii) the number of dwellings with *four* bedrooms or more shall not exceed 25 (these could include an office for home-working and / or an annexe to accommodate a relative); and**
- (iii) dwellings, of whatever size, designed for older residents or active retirees**

should preferably be built to the Lifetime Homes standard; and

- (iv) 20% of all properties *should be* affordable housing or that percentage relevant under *national or* Borough policies at the time the planning application is submitted *subject to viability considerations*; and
- (v) it can be demonstrated that the development will not have a detrimental impact on wildlife, as evidenced through an *appropriate* wildlife survey; and
- (vi) vehicle access into the residential part of the site shall be provided from Richard Avenue; and
- (vii) 2 hectares of land to the northern part of the site adjacent to Broad Lane Sports Ground *as indicated on Figure 35* shall be provided for additional sports pitches; and
- (viii) a dedicated footpath / cycleway along Elmstead Road to link up Broad Lane Sports Ground with the built-up part of Wivenhoe shall be provided; and
- (ix) a shared-use footpath and cycle track shall be provided directly linking the development to the facilities at Broad Lane Sports Ground and linking with the public footpath to the south of the site; and
- (x) a contribution shall be paid towards the creation of a combined footpath/cycle track linking the new development to the public footpath (FP No. 14) from The Cross; and
- (xi) contributions towards open spaces, sports, recreational facilities and community facilities shall be required in line with Borough Policies current at the time any application for planning permission is made.

Proposals to include some self-build plots within this site allocation will *also* be supported.”

#### ***Land at Elmstead Road***

#### **Policy WIV 30 Land at Elmstead Road**

The Plan supports development of 25 dwellings on a site of some 0.93 hectares. As part of the acceptability of the scheme, land to the northeast is to be used as a cemetery. A new cemetery is needed as few plots are available and there is also demand for ‘green’ burials.

Figure 36 on page 85 of the Plan shows the area proposed for residential development whilst Figure 37 shows both the area for residential and the cemetery.

I saw at my site visit that both areas relate to the built up area or the existing Sports Ground, but presently are farmland with no discernible rear boundary. It will therefore be important to ensure that treatment along the boundary is appropriate.

A representation on behalf of the landowner suggests a different location for the cemetery which is rejected by the Town Council. I cannot see any reason why, in spatial terms, the cemetery cannot be located as per the policy. However, I agree that the

policy could be clearer that it is the land which is being gifted rather than the implementation of the cemetery itself.

Once again, similar issues arise in this policy as in the previous Policies WIV 28 and WIV 29. For the same reasons a number of modifications to the policy are made.

With these modifications, the policy will take account of national policy and guidance, generally conform to borough level policies and in particular CS Policy H3 and will help to achieve sustainable development.

- **Change the policy to read:**

***“The land shown in Figure 36 totaling 0.93 hectares is allocated for a minimum of 25 dwellings subject to the following conditions:***

- (i) each dwelling to be of a maximum of two bedrooms suited primarily for single people or as ‘starter’ homes for young couples; and***
- (ii) 20% of these dwellings should be affordable housing or that percentage relevant under national or Borough policies at the time the planning application is submitted subject to viability; and***
- (iii) land of a minimum of 1.5 hectares in size and as shown on Figure 37 for use as a proposed new cemetery and car park be gifted to Wivenhoe Town Council. Subject to viability, it is expected this site will be provided with car parking for 12 cars, be suitably fenced on all sides, incorporate a suitable footway through it and provide a cold water supply to a stand-pipe before it is gifted to the Town Council; and***
- (iv) a hydrological or other necessary surveys demonstrate that ground conditions are suitable for the cemetery and will not have an unacceptable impact on local drainage; and***
- (v) appropriate landscaping to be implemented on the north west boundary of the residential part of the site in order to ensure that development is well screened by trees and not easily visible to people travelling on Colchester Road; and***
- (vi) it can be demonstrated that development will not have a detrimental impact on wildlife, as evidenced through an appropriate wildlife survey; and***
- (vii) appropriate pedestrian and vehicle access into the residential part of the site from Elmstead Road is provided; and***
- (viii) contributions towards open spaces, sports, recreational facilities and community facilities will be required in line with current policy at the time any application for planning permission is made.”***

## ***Land behind the Fire Station, Colchester Road***

### **Policy WIV 31 Land behind the Fire Station**

This policy allocates some 3.56 hectares of land of which some 2.7 hectares is for residential development (some 80 dwellings) and the remainder for a care home.

Once again, similar issues arise in this policy as in the previous Policies WIV 28, WIV 29 and WIV 30. For the same reasons a number of modifications to the policy are made. Others are also recommended to increase flexibility and remove unnecessary prescription that may threaten the deliverability of the site and in any case are more appropriately dealt with through a planning application.

A representation has suggested that the land indicated for the care home element of the policy should be included in the settlement boundary. The Plan has included the areas for residential development within the revised settlement boundary, but not any other development. Whilst this is always a matter of judgment, in this case given how the Plan has presented its site allocation policies, it is not necessary for the care home element to be included within the settlement boundary.

With these modifications, the policy will take account of national policy and guidance, generally conform to borough level policies and in particular CS Policy H3 and will help to achieve sustainable development.

- **Change the policy to read:**

**“The land behind the Fire Station shown in Figure 39 totaling 3.56 hectares of which 2.7 hectares is allocated for *a minimum of 80 dwellings* subject to the following conditions:**

**(i) *the gift of 0.15 hectare of land to build a minimum of 5 dwellings suitable for people aged over 60 in need of housing, currently or recently living or working in Wivenhoe or having close family connections to people living or working in Wivenhoe to a suitable housing charity; and***

**(ii) *a minimum of 20 dwellings suitable for occupation by older people including the frail elderly and active retirees and preferably built to the Lifetime Homes Standard should be provided; and***

**(iii) *a minimum of 15 dwellings of smaller units suitable for older people, single people or young couples should be provided; and***

**(iv) *the number of dwellings with four or more bedrooms should not exceed 15 and could also incorporate an office for home working or annexe to accommodate a relative; and***

**(v) *at least 50% of all dwellings should be constructed to the Lifetime Homes Standard; and***

**(vi) *20% of dwellings should be affordable housing or that percentage relevant under national or Borough policies at the time the planning application is***

submitted *subject to viability*; and  
(vii) *land* for allotments is provided on a field of approximately 1.5 hectares close by Broomgrove Schools *together with a suitable access*. *Subject to viability this site should be provided with a mains water supply; and*  
(viii) contributions towards open spaces, sports, recreational facilities and community facilities will be required in line with current *policy* at the time any application for planning permission is made; and  
(ix) *appropriate* landscaping is *provided* on the northern boundary of the site in order to ensure that development is well screened; and

Proposals to include some self-build plots *will be* supported.

An additional 0.86 hectares of land, adjacent to the site allocated for housing, is proposed *as a potential site for a care home*. This area is as shown on *Figure 40.*"

## 18 Development and Natura 2000 Sites

This section explains that there are no European sites within the Plan area, but the Colne Estuary Special Protection Area (SPA) is some 132 metres from the Plan area boundary at its nearest point. The Colne Estuary also falls within the Essex Estuaries Special Area of Conservation (SAC).

On the basis of the Habitats Screening Assessment, the Plan explains that Natural England accepts that the 250 dwellings proposed as part of the Plan will not, by themselves, have any likely significant effects. However, in combination with the development proposed in the emerging Colchester and Tendring Local Plans there could be adverse effects. Some of the housing proposed in those two emerging Local Plans would fall within the Plan area itself.

This section of the Plan proposes an action on page 91 of the Plan to help to address the likely increased use of the downstream footpath. It suggests that an information board be placed near the gate to the footpath. However, it does not indicate whose responsibility this might be and so is rather meaningless.

In addition this section explains that the provision of open spaces can mitigate the use of designated sites.

To bring the language used in line with the NPPF, some minor modifications are proposed.

- **Change the title of Section 18 to “Development and *Habitats Sites*”**
- **Change any references to “Natura 2000 sites” or “European sites” to “*Habitats sites*”**

## **Policy WIV 32 Recreational Avoidance from New Housing in Wivenhoe and Mitigation Strategies**

Work on a Recreational disturbance Avoidance and Mitigation Strategy is being undertaken by local planning authorities in the Greater Essex area to address the impact of increased recreational disturbance arising from new housing on Habitats sites. This has taken considerable work and time to reconcile. NE have put forward wording for this policy and its supporting text. Subject to the inclusion of this policy and its explanatory text, the policy will meet the basic conditions.

- **Change the title of the policy to “Recreational *disturbance* Avoidance and Mitigation from New Housing in Wivenhoe”**
- **Reword the policy:**

***“All residential development within the zones of influence of Habitats sites will be required to make a financial contribution towards mitigation measures, as detailed in the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS), to avoid adverse in-combination recreational disturbance effects on Habitats sites.***

***In the interim period, before the Essex Coast RAMS is completed, all residential development within the zones of influence will need to deliver all measures identified (including strategic measures) through project level Habitat Regulations Assessments, or otherwise, to mitigate any recreational disturbance impacts in compliance with the Habitat Regulations and Habitats Directive.”***

- **Delete paragraph 18.7 on page 91 of the Plan and replace with:**

***“Habitats Regulations Assessments have been completed for Colchester Borough Council’s Section 1 Local Plan and Section 2 Local Plan. Both of these assessments identified that the in-combination effects of the Section 1 and Section 2 Local Plans (including the in-combination effects of the Section 2 allocations), together with neighbouring authorities Local Plans and neighbourhood plans are likely to adversely affect the integrity of Habitats sites.***

***In view of that Colchester Borough Council is working with eleven other Greater Essex local planning authorities, and Natural England, on a Recreational disturbance Avoidance and Mitigation Strategy (RAMS). RAMS is a strategic solution to protect the Essex coast from the recreational pressures of a growing population. A RAMS is usually driven by challenges and opportunities arising from planning issues. RAMS generally applies more broadly than at a single designated Habitats site, provides strategic scale mitigation and enables the development of a generic approach to evidence collection and use.***



***Financial contributions will be sought for all residential development, which falls within the zones of influence, towards a package of measures to avoid and mitigate likely significant adverse effects in accordance with policy SP2b of the Shared Strategic Section 1 Plan and policy ENV1 (Environment) of the Section 2 Colchester Borough Local Plan. This includes development allocated in Neighbourhood Plans within Colchester Borough. Details of the zones of influence and the necessary measures will be included in the Essex Coast RAMS Supplementary Planning Document (SPD).***

***In the interim period, before the Essex Coast RAMS is completed, proposals within the zones of influence for recreational disturbance to European sites will need to carry out a project level Habitat Regulations Assessment and implement bespoke mitigation measures to ensure that in-combination recreational disturbance effects are avoided and/or mitigated.”***

- Amend ‘NATURA’ in paragraph 18.2 to “Natura”

## **19 Proposals Maps**

Two Proposals Maps are included. Proposals Map 1 on page 93 of the Plan shows the entire Plan area with the different designations and sites. Proposals Map 2 shows the settlement boundary. I have made a number of modifications and additions to the Proposals Maps throughout this report and do not repeat them at this juncture.

Another map that shows the designations in the 2010 Local Plan is included.

## **20 Glossary**

A useful glossary is included. There are a number of definitions which I consider would benefit from revision in the interests of ensuring that the Plan provides a practical framework in line with the NPPF and these are recommended for modification below. I have used recognised sources of definitions such as the NPPF and the Planning Portal’s glossary to help with the wording of the recommended modifications.

- **Change the definition of affordable housing to that contained in the NPPF February 2019**

## **21 Appendix 1**

This appendix contains information on the engagement carried out.

## 22 Appendix 2

Appendix 2 contains information about the Lifetime Homes Standard.

## 23 Appendix 3

This is a list of community facilities.

## 24 Appendix 4

Appendix 4 refers to open space provision. There is an amendment in the interests of accuracy and consistency to paragraph 24.3 on page 103 of the Plan.

- **Amend paragraph 24.3 to read: “Colchester Borough and Tendring District Councils are *working with other Greater Essex local planning authorities on a Recreational Disturbance Avoidance and Mitigation Strategy for the Essex coast* to address *the recreational* impacts of increased population on the various Natura 2000 sites in *Essex*.”**

## 8.0 Conclusions and formal recommendations

I have recommended modifications to some of the policies and their supporting text for the reasons set out in detail above.

Even though I have recommended a number of modifications to the Plan, these do not significantly or substantially alter the intention or nature of the Plan.

I am satisfied that the Wivenhoe Neighbourhood Development Plan, subject to the modifications I have recommended, meets the basic conditions and the other statutory requirements outlined earlier in this report.

I am therefore pleased to recommend to Colchester Borough Council that, subject to the modifications proposed in this report, the Wivenhoe Neighbourhood Development Plan can proceed to a referendum.

Following on from that, I am required to consider whether the referendum area should be extended beyond the Wivenhoe Neighbourhood Plan area. I see no reason to alter or extend the Plan area for the purpose of holding a referendum and no representations have been made that would lead me to reach a different conclusion. I therefore consider that the Plan should proceed to a referendum based on the Wivenhoe Neighbourhood Plan area as approved by Colchester Borough Council on 29 July 2013.

*Ann Skippers* MRTPI

Ann Skippers Planning  
18 March 2019

## **Appendix 1**

### **List of key documents specific to this examination**

Wivenhoe Neighbourhood Plan October 2017 Draft

Basic Conditions Statement November 2017 update

Consultation Statement December 2017 (Final)

Strategic Environmental Assessment (SEA) Environmental Report August 2016

Strategic Environmental Assessment (SEA) Environmental Report Addendum November 2017

The SEA Scoping Report for the Wivenhoe Neighbourhood Plan June 2015

Habitats Regulation Assessment (HRA) Screening Assessment Revised June 2017

Appropriate Assessment January 2019

Core Strategy adopted December 2008 Selected policies revised July 2014

Development Policies adopted October 2010 Selected policies revised July 2014

Site Allocations adopted October 2010

Colchester Local Plan Focused Review of the Core Strategy (2008) and Development Policies (2010) July 2014

Publication draft stage of Colchester Borough Local Plan 2017 – 2033 June 2017 and other documents relating to the emerging Section 1 and Section 2 Local Plans

CBC Publication Draft Local Plan (Regulation 19) – Section Two HRA Report June 2017

Comments from the Town Council on the Regulation 16 representations

Background documents available on [www.wivenhoeneighbourhoodplan.org.uk](http://www.wivenhoeneighbourhoodplan.org.uk)

## Appendix 2 Questions from the examiner

### Wivenhoe Neighbourhood Plan Examination

#### Questions of clarification from the Examiner to the Town Council and CBC

Having completed my initial review of the Neighbourhood Plan (the Plan), I would be grateful if both Councils could kindly assist me as appropriate in answering the following questions which either relate to matters of fact or are areas in which I seek clarification or further information. Please keep answers as brief as possible and do not send or direct me to evidence that is not already publicly available.

1. Please let me know the start date for the Plan.
2. The Plan area:
  - a. Please confirm the date on which the Plan area approved.
  - b. I understand that the Plan area is conterminous with the Town Council's administrative boundary following amalgamation of two wards (Wivenhoe Cross and Wivenhoe Quay) in 2016. Is this correct?
  - c. Did the Plan area approved cover both former wards?
3. Was the Strategic Environmental Assessment (SEA) Addendum of October 2017 subject to consultation? Please detail all the consultation undertaken in relation to SEA.
4. Please can CBC set out and update me on the latest position with any relevant plans at Borough level and any implications any may have for the neighbourhood plan.
5. Is there any overlap or inconsistency between policies in the Plan? For example, two policies refer to care homes?
6. Page 19 and 20 of the Plan identify specific infrastructure identified through community engagement. Has any other evidence been gathered to support these? If so please briefly detail what work has been carried out.
7. Policy WIV 1 refers to a settlement boundary. It is not clear to me whether this is the adopted settlement boundary, a newly defined settlement boundary or taken from the emerging Local Plan?
8. Policy WIV 10 refers to the Goods Shed:
  - a. Does the site fall within a Conservation Area?
  - b. Paragraph 11.4 indicates the site is currently designated for "leisure, culture and tourism..."; where is this current designation from i.e. which permission or plan?
9. Policy WIV 11 refers to The Quay. Would it be useful to show the area this policy relates to on a map and if so, please could this be provided?
10. Policy WIV 16 refers to the Knowledge Gateway Business Park. Please could further general information about this be provided?
11. Policy WIV 17 refers to the "Wivenhoe Settlement area"; is this the same as the settlement boundary or a different area? I am not clear where this is. And what is

preferred; the phrase 'settlement boundary' or 'settlement area' (if these are the same things)?

12. Policy WIV 20 refers to the Brook Street Business Centre being designated as an employment zone. I am not clear whether the policy seeks to designate it as such and if so what the designation would mean?
13. Pages 69 and 70 of the Plan (Chapter 16 Housing Policies) contain a number of bullet points in bold text which could be said to read as if they were policy. However, there are no policies that sit alongside them. What status do the bullet points have and what could be done to make this section clearer?
14. Page 71 of the Plan contains a table and information about the types of new homes "across all four sites". How does this relate to the policies in the Plan?
15. Policy WIV 28 (land off Croquet Gardens) falls within a Minerals Safeguarding Area. Please advise of what, if any implications this might have on the deliverability of the site.
16. I am not clear what land Policy WIV 29 (land behind Broadfields) applies to. Please provide a map, but also see the next query which relates to this as well.
17. With regard to the four site allocation policies (Policies WIV 28, 29, 30 and 31), it may be clearer to have one map/plan/figure for each proposed site allocation that shows all of the proposed land to be allocated including for the other (non-residential) elements etc. if these requirements are integral to the allocation(?)
18. Does the site subject to Policy WIV 31 fall in the Coastal Protection Belt? If so, what implications arise?

It may be the case that on receipt of your anticipated assistance on these matters that I may need to ask for further clarification or that further queries will occur as the examination progresses. Please note that this list of clarification questions is a public document and that your answers will also be in the public domain. Both my questions and your responses should be placed on the Councils' websites as appropriate.

With many thanks.  
Ann Skippers  
30 November 2018

## Appendix 3 Letter from the examiner

Letter to Sandra Scott  
Place Strategy Manager  
Colchester Borough Council

cc Wivenhoe Town Council

10 July 2018

Dear Sandra,

### **Examination of the Wivenhoe Neighbourhood Plan**

I am writing to draw your attention to a recent judgment of the Court of Justice of the European Union.

In the case of *People Over Wind, Peter Sweetman v Coillte Teoranta*, the Court ruled that Article 6 (3) of the Habitats Directive must be interpreted as meaning that mitigation measures (referred to in the judgment as measures which are intended to avoid or reduce effects) should be assessed within the framework of appropriate assessment (AA) and that it is not permissible to take account of measures intended to reduce or avoid any harmful effects of a plan or project on a European site at the screening stage.

Earlier case law had established that reduction or avoidance measures could be taken into account when considering whether a plan or proposal would be likely to have a significant effect on a European site. However, the implications of the more recent judgment is that this is no longer the case.

I would therefore be grateful if the Council could consider the HRA Screening Report and advise me on whether it considers it to be legally compliant in the light of the judgment. If it is considered not to be legally compliant and to have fallen foul of the judgment, I would ask that the Council advises me of what further work would be required to rectify this, together with an indicative timescale for that work, including any further consultation.

I will clearly reach my own view on this matter as well. Once you have had an opportunity to consider what, if any, further work needs to be undertaken, I suggest that we agree a way forward for the examination of this Neighbourhood Plan.

This letter is of course a matter of public record and should be placed on the relevant websites.

With many thanks,

Ann Skippers MRTPI  
Independent Examiner



## Appendix 4 Letter from the examiner

Letter to Sandra Scott, Place Strategy Manager  
Colchester Borough Council

cc Wivenhoe Town Council (via CBC)  
26 November 2018

Dear Sandra,

### **Examination of the Wivenhoe Neighbourhood Plan Update on Habitats Assessment**

I am writing to set out what I understand to be the current position on neighbourhood plans and habitats assessments. This is an issue which has caused considerable uncertainty for all parties, including examiners, over recent months and unwelcome, but unavoidable delay to the examination process.

You will be aware that the Court of Justice of the European Union has made a number of recent judgments that have affected practice in relation to habitats assessments.

In the case of *People Over Wind, Peter Sweetman v Coillte Teoranta*, the Court ruled that Article 6 (3) of the Habitats Directive must be interpreted as meaning that mitigation measures (referred to in the judgment as measures which are intended to avoid or reduce effects) should be assessed within the framework of appropriate assessment (AA). This means that it is not permissible to take account of measures intended to reduce or avoid any harmful effects of a plan or project on a European site at the screening stage. This meant that some screening opinions needed to be reviewed in the light of this judgment. In turn this resulted in some neighbourhood plans being 'screened in' (i.e. found to have likely significant effects) and needing to move to the next stage of habitats assessment – AA.

The Government has now indicated that it intends to make an amendment to regulations "to ensure that neighbourhood plans that are 'screened in' to the assessment process can continue to progress, following an AA. An AA would consider any impacts alongside mitigation measures, following the same process as assessments for Local Plans."

It is expected that an amendment will be laid in early December 2018. Subject to parliamentary approval, the new basic condition should take effect at the end of December 2018, probably on 28 December 2018. The Government has indicated this would not apply retrospectively.

The Government has also indicated its intention to issue guidance on the implications of the judgment and has shared the proposed amendment and memorandum:

**"Amendment to the Neighbourhood Planning (General) Regulations 2012**



3.—(1) The Neighbourhood Planning (General) Regulations 2012<sup>(1)</sup> are amended as follows.

(1) In Schedule 2 (Habitats), for paragraph 1 substitute:

**Neighbourhood development plans**

1. In relation to the examination of neighbourhood development plans the following basic condition is prescribed for the purpose of paragraph 8(2)(g) of Schedule 4B to the 1990 Act<sup>(2)</sup>—

The making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017<sup>(3)</sup>.

**Explanatory memorandum:**

Regulation 3 amends the Neighbourhood Planning (General) Regulations 2012 to revise one of the basic conditions for making a neighbourhood plan. The revised basic condition requires that neighbourhood plans can only be made if they have followed the requirements of the Directive transposed into Chapter 8 of Part 6 of the 2017 Regulations (which set out the habitat assessment process for other land use plans, such as Local Plans). This assessment process is already applicable to neighbourhood plans, as they are defined as a 'land use plan' in regulation 111 of the 2017 Regulations. This amendment connects the basic condition for making neighbourhood plans to this process."

As this Neighbourhood Plan has been 'screened in', it seems to me that it would be sensible for this issue (which largely appears to be a procedural matter) to be fully resolved before the examination is concluded.

Once both the local authority and the Parish Council have had an opportunity to consider the Government's position, please contact me so we formally agree the key milestones for the way forward.

This letter is of course a matter of public record and should be placed on the relevant websites.

With many thanks,

Ann Skippers MRTPI  
Independent Examiner

## Appendix 5 Letter from the examiner

Letter to Sandra Scott  
Colchester Borough Council

4 January 2019

Dear Sandra,

### **Examination of the Wivenhoe Neighbourhood Plan Amendment to the Basic Conditions**

I am writing to draw your attention to the Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018 which came into force on 28 December 2018.

Amongst other things, these Regulations amend the basic condition prescribed in Regulation 32 and Schedule 2 (Habitats) of the Neighbourhood Planning (General) Regulations 2012 (as amended) which stated:

- The making of the neighbourhood plan is not likely to have a significant effect on a European site or a European offshore marine site either alone or in combination with other plans or projects.

**The Regulations substitute a new basic condition which states:**

- **The making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017.**

The Conservation of Habitats and Species Regulations 2017 include regulations on the assessment of plans (including neighbourhood plans) and projects on European sites or European offshore marine sites. The first stage is to screen the plan to see whether it is likely to have a significant effect on any European site. If the plan is 'screened in' because significant effects cannot be ruled out, the next stage is for an appropriate assessment to be carried out considering the impact on the European site's conservation objectives. Consent for the plan can only be given if it is 'screened out' at the first stage or the appropriate assessment concludes the integrity of the European site will not be adversely affected.

Case law (*People Over Wind*, *Peter Sweetman v Coillte Teoranta*) ruled that it is not permissible to take account of measures intended to reduce or avoid any harmful effects of a plan or project on a European site at the screening stage. This represented a move away from what was common practice. Any 'mitigation' measures can now only be considered at the appropriate assessment stage.

This resulted in some confusion as to whether neighbourhood plans 'screened in' could progress because of the wording of the basic condition.

The substituted basic condition removes this confusion; it gives certainty that those neighbourhood plans which have been 'screened in' and therefore require appropriate assessment can continue to progress (provided that the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017 are met).

The process for appropriate assessment of neighbourhood plans is the same as assessments for Local Plans.

There are no transitional arrangements and so the substituted basic condition applies from 28 December 2018. It will therefore apply to any neighbourhood plans currently at examination or those submitted for examination on or after 28 December 2018.

As all basic conditions must be met by a neighbourhood plan before it can proceed, I would be grateful if you would consider this change to the basic conditions and let me know of any implications arising from it for the examination of this neighbourhood plan. I will reach my own view on this matter as well.

Once you have had an opportunity to consider what, if any, further work needs to be undertaken, I suggest that we agree a way forward for the examination of the Neighbourhood Plan, including any new timescales should further work be required.

This letter should be placed on the relevant Council websites.

With many thanks,

Ann Skippers MRTPI  
Ann Skippers Planning  
Independent Examiner

## Appendix 6 Note from CBC

### Wivenhoe Neighbourhood Plan Appropriate Assessment Consultation

#### Introduction

In 2018 the European Court of Justice decision, *People Over Wind, Peter Sweetman v Coillte Teoranta*, ruled that Article 6(3) of the Habitats Directive must be interpreted as meaning that mitigation measures should be assessed within the framework of appropriate assessment. As a result of this ruling, it is no longer possible to take account of avoidance and mitigation measures at the screening stage.

The Habitat Regulations Assessment screening report for the Wivenhoe neighbourhood plan identified likely significant effects in-combination with other plans as a result of increased recreational disturbance. The implications of the *People Over Wind* decision are that mitigation measures for these likely significant effects cannot be considered at the screening stage.

There has been uncertainty and confusion over whether an appropriate assessment can be carried out for a neighbourhood plan, and this uncertainty has caused delay for many neighbourhood plans nationally.

On 28 December 2018 the Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018 came into force. Amongst other things, these Regulations amend the basic condition prescribed in Regulation 32 and Schedule 2 (Habitats) of the Neighbourhood Planning (General) Regulations 2012 (as amended).

The amended Regulations substitute a new basic condition, which states:

"The making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017."

This substituted basic condition removes the uncertainty over whether an appropriate assessment can be carried out for a neighbourhood plan. If screening concludes that there are likely significant effects, an appropriate assessment can be carried out in accordance with the Conservation of Habitats and Species Regulations 2017.

Accordingly Colchester Borough Council carried out an appropriate assessment of the Wivenhoe neighbourhood plan. Natural England, Historic England, the Environment Agency and all people/ organisations that submitted a representation as part of the Regulation 16 consultation were consulted on the appropriate assessment report for a period of 6 weeks, from 9 January - 20 February 2019.

#### Representations

Representations were received from Natural England, Historic England and Highways England.

Natural England submitted the following representation:



"Natural England is broadly happy with the conclusions of the appropriate assessment and this is now compliant with The People over Wind ruling. We have not seen the latest version of the Wivenhoe Neighbourhood Plan, however provided the policy for recreational disturbance avoidance and mitigation - as detailed in our previous response, dated 19<sup>th</sup> March 2018, our ref: 238112, and as described in paragraph 5.18 of the appropriate assessment - is now included within the plan, we can agree with the conclusions of the appropriate assessment, in that it is possible to conclude no likely significant effect alone or in-combination."

Historic England responded to the consultation stating:

"I can confirm that we do not wish to comment, as it relates to an area outside Historic England's remit."

Highways England responded to the consultation stating:

"The report is primarily about environmental impact and appears to make little reference to the Strategic Road Network. And therefore we have no comments to make on the report. I am assuming the Wivenhoe plan fits with the Colchester Local Plan and as such any transport implications would be picked up with the evidence base and supporting information for that local plan."

#### **Colchester Borough Council comment and conclusion**

The policy for recreational disturbance, avoidance and mitigation referred to by Natural England is intended to be included in the Wivenhoe Neighbourhood Plan. Colchester Borough Council's representation to the Wivenhoe neighbourhood plan recommends a modification to policy WIV32 to include the wording requested by Natural England. This modification is supported by the Qualifying Body.

Modified policy WIV32, refers to the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). The RAMS Strategy Document is finalised, following sign off from Natural England, and was presented to Colchester's Local Plan Committee on 4 February 2019. The Local Plan Committee also agreed that the draft RAMS SPD can be published for consultation after the elections, following agreement from all partner local planning authorities. In the interim period, before the SPD is adopted, Colchester Borough Council is collecting financial contributions in line with the RAMS Strategy Document.

It is clear from the appropriate assessment report and response from Natural England, that the Wivenhoe Neighbourhood Plan will not lead to likely significant effects on Habitats sites either alone or in-combination.

The Wivenhoe Neighbourhood Plan meets the basic conditions.

February 2019