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## Appeal Decision

Inquiry held on 5 – 7, 12 April 2022

Site visit made on 7 April 2022

**by Jonathan Price BA(Hons) DipTP MRTPI DMS**

**an Inspector appointed by the Secretary of State**

**Decision date: 13 May 2022**

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**Appeal Ref: APP/A1530/W/21/3278575**

**Land adjoining The Gables, Kelvedon Road, Tiptree, Essex CO5 0LU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Marden Homes Limited against Colchester Borough Council.
  - The application Ref 190647, is dated 31 January 2019.
  - The development proposed is demolition of existing buildings on the site and redevelopment to provide 130 residential dwellings with access, link road to allow for potential future connections, associated parking, private amenity space and public open space.
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### Decision

1. The appeal is allowed and planning permission is granted for demolition of existing buildings on the site and redevelopment to provide 130 residential dwellings with access, link road to allow for potential future connections, associated parking, private amenity space and public open space at land adjoining The Gables, Kelvedon Road, Tiptree, Essex CO5 0LU, in accordance with the terms of the application, Ref 190647 dated 31 January 2019, subject to the conditions set out in the Schedule attached to this decision.

### Preliminary Matters

2. The Inquiry sat for two and a half days as a physical event, after which the accompanied site visit took place. A round table discussion over planning obligations and conditions, as well as closing statements, were heard virtually the following week, after which the Inquiry was closed.
3. The appeal is over the Council's failure to give notice of its decision within the statutory period. The Council has since confirmed putative reasons for refusal (RfR), were it in a position still to determine the application, through a delegated report<sup>1</sup>. These reasons were, in short, over the scheme constituting poor design, failing to secure the required mitigation over off-site protected areas and supporting infrastructure and not meeting the standards required for highway safety.
4. A draft agreement between the developers, site owners, the Borough Council and Essex County Council, made under section 106 of the Town and Country Planning Act 1990 (s106), was available to the Inquiry. A copy of an executed version was provided shortly after the event. The s106 addresses the RfR

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<sup>1</sup> Dated 12 August 2021 (CD 10.12)

relating to off-site protected areas and infrastructure mitigation, which have thus fallen away. I deal with the s106 and the further obligations this contains in more detail below.

5. Prior to the Inquiry, the appellant had engaged with the local highway authority and submitted further details which overcame its objections. This is covered in a Statement of Common Ground<sup>2</sup> (SoCG) and, subject to conditions, the putative RfR over highway safety also falls away.
6. The outstanding putative RfR over the design of the scheme thus comprises the main issue in the appeal. The SoCG<sup>3</sup> over general matters narrows this down to differences over the acceptability of layout, built form, contextual relationship and connectivity. The SoCG confirms the Council's agreement to the principle of developing the appeal site for housing. Other key areas of disagreement addressed at the Inquiry were in relation to housing need (including affordable housing) and the policies most important for determining the appeal. The evidence over these matters feeds into an appraisal of scheme benefits and the overall planning balance.
7. Since the original application, the National Design Guide (NDG) was published in January 2021 and the National Planning Policy Framework (the Framework) revised on 20 July 2021, both of which are material considerations in this appeal. The revised Framework raised the standard set for achieving well-designed places, with reference to the NDG. Notably, this includes seeking refusal of development not well designed, rather than just that of poor design as previously. In addition to the NDG, the Essex Design Guide (2018 edition) remains relevant to evaluating this proposal.

## **Main Issue**

8. On the basis of the above, the main issue in the appeal is whether this proposal would comprise a well-designed development, with particular regard to context, layout, built form and connectivity.

## **Local Policy Background**

9. The development plan for Colchester Borough currently includes the recently adopted North Essex Authorities' Shared Strategic Section 1 Local Plan<sup>4</sup> (S1LP), along with the earlier Core Strategy<sup>5</sup> (CS), Development Policies<sup>6</sup> (DP) and Site Allocations<sup>7</sup> (SA). These three earlier plans are very soon likely to be replaced by the Section 2 Local Plan (S2LP). Once adopted, this will provide specific policies and allocations for Colchester Borough, sitting alongside the joint North Essex Authorities' strategy provided by the S1LP. Having been the subject of Examination and consultation upon the Inspector's resulting Main

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<sup>2</sup> Statement of Common Ground: Highways – between Marden Homes, Colchester Borough Council and Essex County Council March 2022.

<sup>3</sup> Statement of Common Ground: General Matters – between Marden Homes, Colchester Borough Council and Essex County Council March 2022.

<sup>4</sup> Colchester Borough Local Plan 2013-2033 Section 1 North Essex Authorities' Shared Strategic Section 1 Plan Adopted February 2021

<sup>5</sup> Colchester Local Development Framework Core Strategy adopted December 2008.

<sup>6</sup> Colchester Local Development Framework Development Policies adopted October 2010, selected policies revised 2014.

<sup>7</sup> Local Development Framework Site Allocations Adopted October 2010.

Modifications<sup>8</sup>, the S2LP has reached a very advanced stage and its policies are afforded significant weight.

10. The currently adopted SA Tiptree inset map shows the appeal site adjacent to but outside the village settlement boundary and partly allocated for employment use. The same boundary and allocation are retained in the S2LP emerging policies map, but with an arrow along the Kelvedon Road, adjacent to the appeal site, showing a preferred direction of growth.
11. Within the preferred directions of growth shown on this policies map, S2LP Policy SS14, as modified, provides for the Tiptree Neighbourhood Plan (TNP) to define the extent of a new settlement boundary, allocate specific sites to deliver a minimum of 400 dwellings and set out any associated policies needed to support this in terms of housing mix, type and density. However, as of February 2022, the TNP is only at the pre-submission (Regulation 14) stage and so its emergent policies currently carry little weight.

## **Reasons**

12. The appeal site comprises a parcel of mainly undeveloped land on the outskirts of the large village of Tiptree. This is one of the three main centres within the Borough's rural hinterland outside Colchester urban area. Its services include two supermarkets, four primary schools, a secondary school, community centre, doctor's surgery and quite a wide range of other shops and facilities.
13. The appeal site fronts two sections of the B1023 Kelvedon Road, to either side of a detached house called The Gables. The land wraps around the long garden of The Gables and extends further to a rear boundary backing partly onto countryside. The proposal would replace plotland development along one frontage, which includes three bungalows with various ancillary buildings to their rear. Some of this housing comprises Gypsy and Traveller accommodation that would relocate to the other side of The Gables, onto an existing site. Beyond this frontage development, the remainder of the site is mainly greenfield and used partly to keep horses. A belt of vegetation bisects the site, joining up with the thick hedging running along the rear boundary.
14. To one side and part way along the rear, the scheme abuts a housing development being built off Grange Road. A public right of way (PRoW) runs to the outside of the rear boundary. A relatively narrow section of undeveloped land is to the other side of the appeal site and separates it from the Tower Business Park. The employment buildings here provide a substantial and strongly defined built up edge to the settlement, extending a comparable depth to the appeal scheme.
15. Sited between Tower Business Park and the housing being built off Grange Road, and with thick hedging running to its rear, the appeal site is visually enclosed, with limited views from Kelvedon Road to the countryside beyond. Because of this enclosed nature, including the plotland frontage, I do not share the Council's view that the appeal site performs an important transitional role between open countryside and the intensively developed Tiptree settlement.
16. Contextually, the appeal site is part of a loosely developed suburban fringe and its enclosed nature deprives it of any particular landscape value relating to the

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<sup>8</sup> Colchester Borough Local Plan 2013-2033 Part 2 Local Plan - Tracked Changes Version Including Main and Additional Modifications - October 2021

wider countryside. The street scene along the adjacent section of Kelvedon Road, including the appeal site frontage, is of a rather mixed character, comprising a loose arrangement of houses, bungalows, Gypsy and Traveller sites and business yards. The appellant has appropriately taken the main built-up residential parts of Tiptree as the design context, rather than the plot land development in the immediate vicinity.

17. The extensive built-up area of Tiptree mainly comprises twentieth century and more recent housing of one or two-storeys, laid out at a consistent and quite high density. In this context, the 130 dwellings proposed would be at a broadly appropriate grain. There would be little merit in a scheme perpetuating the existing mixed character of the Kelvedon Road frontage. The poor-quality appearance of this existing plotland development, and the enclosed nature of the appeal site, make no reasonable case for requiring a more open textured scheme than proposed, or a filtered, lower density transition into the countryside.
18. The scheme layout reflects the shape of the land assembled, with the need to provide a safe access point onto Kelvedon Road and then work around the projecting curtilage to The Gables. This dictates the position of the main spine road and the secondary cul-de-sacs stemming from this, with the main area of multi-functional public open space (POS) placed centrally. Of necessity, the cul-de-sacs truncate against those sides of the site facing open land, in order to future proof connectivity to these areas. The narrower of the two frontages onto Kelvedon Road provides a secondary site entrance for pedestrians and cyclists.
19. The Council appears to accept both the internal road layout being dictated by the shape of the site and the provision of a centrally placed POS within this. This amounts to an area of some 5000m<sup>2</sup>, meeting the guideline for at least ten percent of gross site area sought by Policy DP16 and emerging S2LP Policy DM18.
20. The centrally located POS would make it accessible to future occupiers throughout the development and safeguard a significant part of the central tree belt. It provides a 400m<sup>2</sup> local equipped area of play and would otherwise be multi-functional, including a SuDS attenuation basin and space for informal recreation, dog walking and bench seating. It would comprise the well-located public space that the NDG seeks, to support a wide range of activities and encourage social interaction, health and well-being. By having housing facing onto this POS, the layout follows NDG advice for these areas to feel safe and secure. This proposal is not of a scale to provide a hierarchy of multiple spaces, considered necessary by the Council. I am content in this regard that the single area of multi-functional POS would be entirely appropriate for this size of development and would form part of the open space hierarchy within the wider settlement.
21. In anticipation of the forthcoming requirements of Part 6 of the Environment Act 2021, the proposal was accompanied by a Biodiversity Net Gain (BNG) assessment<sup>9</sup>, carried out in accordance with the July 2021 update of the Defra Biodiversity Metric 3.0. This concludes that the development can potentially deliver an overall gain of just over 20% for habitat units and around 25% for hedgerows/linear features, all provided on-site and without the need for off-site

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<sup>9</sup> By James Blake Associates, 25 February 2022

mitigation. The Council's evidence challenged the actual amount of BNG claimed, pointing to loss of an existing pond and what it considers to be a substandard replacement, the extent of hedgerow removal, reliance on the single public open space and deriving tree canopy cover from just the semi-mature planting of roadside verges and gardens. In the event, however, the Council did not fully substantiate that at least a 10% BNG would be unachievable, so as to fail the forthcoming statutory obligation.

22. The Council had concerns over the built form of the housing, particularly the taller, higher density frontage proposed in place of the loosely arranged, single storey plots. However, in addition to the need to improve upon the poor-quality appearance of this existing low-density development, I also consider it appropriate for the scheme to strengthen the built form along the road frontage. The up to three storey terrace proposed to curve around the main access would provide a suitable gateway feature, unapologetically announcing the new start of the main built-up settlement. The Essex Design Guide supports such a landmark feature, which would be contextually appropriate at this point.
23. The less than striking views of countryside and the horizon through the existing bungalow plots would be replaced by a vista along the gently curved alignment of the main access. This view would be framed by the housing to either side, leading to the backstop of the verdant POS edge and rear site boundary. The landscaping proposed means this main vista would not terminate in the brutal manner feared by the Council. Relative to an existing poor quality street scene, without meaningful views of distant countryside, the scheme would be an uplift to visual character at this village entrance point.
24. To the other side of The Gables, the Council is unhappy also about the three detached dwellings that would front the street and replace the roadside hedge and glimpsed views of the countryside provided through its gaps. The loss of this hedge allows for the widened footway along this section of Kelvedon Road. There are currently limited views of the countryside through this hedge anyway, and these will eventually be curtailed by the approved housing off Grange Road. Furthermore, new native hedging to the front gardens forms part of the landscaping proposed here.
25. Inevitably, the development of this largely vacant site will bring about visual change. However, the land is mostly enclosed by existing and other proposed development and has little intrinsic landscape value. Nor does it preserve particularly important views of the countryside beyond. The built form of residential development, if of an acceptable design, would cause limited harm.
26. Much of the Council's design critique I find unreasonable, with no grounds to share its negative view over this being suburban-inspired development that lacks any contextual references to the traditional settlement morphology in the Tiptree area. The reality is that this proposal comprises an addition to the suburban extent of Tiptree and is contextually appropriate in relation to this. Tiptree lacks any distinctive character of its own. This factor does not negate the requirement for a well-designed scheme. Nevertheless, in such a context, the designs proposed would quite appropriately reflect a more general Essex vernacular, with a particular emphasis on the traditional use of coloured render as found in this village.
27. I disagree with the Council that the proposed house-types reflect a bland anodyne suburban character. Referencing the delegated report, the use of a

limited number of house types, a broadly vernacular aesthetic and a consistent palette of materials would achieve an identifiable and appropriate site-wide character. The built forms and colourful palette of materials would create visual interest and the restrained degree of vernacular detailing avoids any reasonable criticism of the scheme comprising an 'ersatz pastiche'.

28. As a result of the interrelationship between plots and with the highway, three distinct character areas are evident in plan form. Given the homogeneity of architecture and materials, these areas tie together to create a suitably coherent whole. Given that the Council agrees with the principle of housing on this site, its criticism of the scheme forming a residential monoculture is unreasonable, particularly with the appropriately tenure-blind and integrated mix of house types. The design and varied arrangement of the housing shown, with the three storey elements sparingly used to anchor key points within the layout, would be entirely satisfactory. Given the present nature of the site and surroundings, the scheme would, as a whole, enhance the prevailing character and appearance of this area.
29. In an earlier iteration of the TNP, the appeal site had been a part of a larger Tower End housing allocation. The TNP has since returned to Regulation 14 stage, with the preferred allocations now being those at Highland Nursery and Elms Farm, to the other side of Kelvedon Road. This scheme nevertheless future proofs expansion by the estate roads running up to the boundaries to undeveloped land. I do not share the Council's concerns over the appearance of such an arrangement, which necessarily secures future connectivity. This had not been the case with the development taking place off Grange Road, where no future footpath or cycleway link into the appeal site had been provided for. Furthermore, the Marden Homes layout allows for a future connection to the PRow running to the rear of the site. However, achieving this relies on the cooperation of separate land owners.
30. Despite having to navigate the projecting curtilage of The Gables, the appeal scheme provides an acceptable degree of internal connectivity. Lying to the edge of the settlement, the site is close to existing bus stops and the roads and footways which connect to shops and services in the village centre. Connectivity would be enhanced by the second pedestrian entry point and widened footpaths and crossing points along Kelvedon Road. This is now to the satisfaction of the local highway authority. Taking all the above factors into account, the proposal makes adequate provision for vehicular, pedestrian and cycle connectivity to the village centre and adjacent land.
31. The proposal would meet the architectural design standards and place shaping principles of S1LP Policy SP7, by responding positively to local character and context, including well-considered public and private realms, incorporating biodiversity and providing a well-connected place that prioritises the needs of pedestrians and cyclists. The equivalent requirements of emerging S2LP Policy DM15 are also met. Furthermore, the scheme would comply with the 10% BNG sought through emerging S2LP Policy ENV1.
32. The scheme would meet the criteria for built design and character in CS Policy UR2 and Policy DP1. That said, CS Policy ENV1 and emerging S1LP Policy OV2 resist the development of unallocated and greenfield land outside of the Tiptree settlement boundary. However, the enclosed nature of the site reduces the degree of harm that would arise from this policy conflict.

33. On the main issue, I conclude that this proposal would provide a contextually appropriate and well-designed housing development, suitable in respect of its layout, built form and connectivity. The scheme gains the support of the Essex Design Guide. I find that the proposal would give rise to little conflict with the current and emerging development plan policies that relate to design, when these are considered as a whole.
34. There would be only the relatively small degree of harm inevitable with building taking place on a mainly greenfield site. Otherwise, the proposals would be visually attractive as a result of good architecture, layout and appropriate and effective landscaping, be sympathetic towards local character and establish a strong sense of place, thus meeting the requirements of Framework paragraph 130. Applying a degree of proportionality and being reflective of context, the proposal would satisfy the Framework's aims over creating high quality, beautiful and sustainable buildings and places, as supported through the NDG.

### **Planning obligations**

35. A copy of the completed s106, dated 5 May 2022, was provided after the Inquiry with my agreement. The obligations address a range of matters. The scheme would provide 30% affordable housing on site. No less than 80% of this would be for affordable rent and no more than 20% shared ownership. A contribution of £348 is secured to update the Historic Environment Record with archaeological data from the site report.
36. The Community Contribution of £352,659.53 would offset additional demand on facilities and be used to fund a new Scout and Guide hut in Tiptree. To mitigate for the increased demand on open space and recreation facilities, a Borough contribution of £157,500, Ward contribution of £292,500 and on-site maintenance contribution of £93,588 are all to be made.
37. A contribution of £127.30 per dwelling is secured by way of ecological mitigation required under the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). To mitigate for increased demand upon local health care, an NHS contribution of £79,376 is to be made. Similarly, a formula-based contribution towards education is provided. The final schedule in the s106 ensures the relocation of the Gypsy and Traveller pitch currently occupying the appeal site.
38. I have considered the obligations made against the tests set out in paragraph 57 of the Framework and Regulation 122(2) of the Community Infrastructure Levy (CIL) Regulations 2010. The CIL Compliance Schedule provided by the Council has assisted me with this process. The obligations made in the s106 each meet the required tests and I consider them to be a) necessary to make the development acceptable in planning terms, b) directly related to the development and c) fairly and reasonably related in scale and kind to the development.

### **Habitats Regulations Assessment**

39. All of Colchester Borough lies within the Zone of Influence established in the Essex Coast RAMS Supplementary Planning Document<sup>10</sup>. In that location, the 130 dwellings proposed would have a likely significant effect upon the notified

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<sup>10</sup> Essex Coast Recreational disturbance Avoidance and Mitigation Strategy Supplementary Planning Document (SPD) May 2020

interest features of the European designated sites along the adjacent Essex coast, either alone or in combination with other plans or projects. This is due to the further households leading to increased recreational pressure, which can then impact negatively upon the condition of these site features, such as from bird disturbance from people and dogs and the impacts of water sports and boating.

40. The main parties provided a separate SoCG<sup>11</sup> in respect of the mitigation measures proposed to address the RAMS requirements. The s106 secures the required RAMS mitigation contribution of £127.30 per dwelling. Furthermore, the portion of the Parks and Recreation contribution secured through the s106 for Ward projects would be applied to recreational facilities<sup>12</sup> accessible from the site by foot, allowing for dog walking and other recreational activities. The scheme separately provides for improved pedestrian connectivity to these recreational facilities, with the footway widening and crossings on Kelvedon Road. On site, the proposals include the centrally placed POS, with connecting internal pedestrian routes, which will include suitably located benches and dog waste bins.
41. These mitigation measures were taken into account by the Council in carrying out its own Appropriate Assessment under the 'Habitats Regulations'<sup>13</sup>, which Natural England had been satisfied with<sup>14</sup>. The same duty now falls to me, as competent authority. Having considered the likely significant effects of the appeal scheme, and on the basis of the secured mitigation measures outlined above, I am able to conclude that the appeal proposals would not have an adverse effect upon the integrity of the European sites included in the Essex Coast RAMS.

### **Other Matters**

42. A number of further matters of concern were raised by interested parties to both the original application and this subsequent appeal. Much of these wider concerns are captured by the statements provided on behalf of Tiptree Parish Council and the TNP Steering Group, who were represented at the Inquiry.
43. There are concerns that this proposal comprises piecemeal development and would prejudice the 400 dwelling allocation being planned comprehensively through the TNP. I recognise, in this regard, that the appeal site is no longer part of the larger TNP Tower End allocation. However, it would fill an enclosed gap between the Grange Road development and the Tower Business Park, without expanding further into the countryside. I find this to be a suitable rounding off of development in accordance with the direction for new development preferred in the emerging S2LP.
44. The scale of development proposed would not be such as to undermine the comprehensive delivery of further growth at Highland Nursery and Elms Farm, with the link road and other supporting infrastructure this might provide for. Through the s106 obligations, this proposal mitigates for the additional demands it would itself place upon health, education and other village services.

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<sup>11</sup> Statement of Common Ground between Marden Homes and Colchester Borough Council RAMS – signed 28 March 2022.

<sup>12</sup> At Warriors Rest, Grove Lake and Grove Road Recreation Ground.

<sup>13</sup> Conservation of Habitats and Species Regulations 2017 (as amended)

<sup>14</sup> Letter dated 4 May 2021 – Appendix 2 of the RAMS SoCG

45. In respect of other concerns, the scheme would cause no material harm to the living conditions of existing residential occupiers, due to loss of light, outlook or privacy. Moreover, the Lead Local Flood Authority has agreed<sup>15</sup> to the proposals subject to satisfactory surface water drainage arrangements, which might be secured through conditions.
46. The proposal addresses the requirements relating to protected species. Bats were not found to be roosting in any of the existing buildings and future tree removal will first require suitable bat roost assessment. A small population of Common Lizards found along the central hedgerow will be subject to retention mitigation. The Great Crested Newt presence recorded in one of the ponds on site will be addressed as part of a subsequent licence application to Defra.

### **Housing Need**

47. Housing supply and need were the subject of a specific SoCG<sup>16</sup>. It was agreed that the S1LP, adopted in February 2021, set the housing requirement for Colchester Borough at 920 dwellings per annum (dpa). The housing requirement for the period 2021-2026 was for 4,830 dwellings, applying a 5% buffer. It was agreed that the Council could show 5,545 dwellings deliverable in this period, amounting to a 5.74-year housing land supply. In addition, the Council has met the Housing Delivery Test over the previous three years. Therefore, footnote 8 to Framework paragraph 11 does not deem the policies most important for determining the appeal out-of-date in respect of housing provision.
48. The S1LP was submitted in October 2017 and its housing requirement reflected an Objectively Assessed Need (OAN) based on the 2012 Framework. The July 2018 revision to the Framework replaced OAN with Local Housing Need (LHN), calculated on a standard method. However, transitional arrangements allowed the S1LP to proceed to adoption on the basis of a housing requirement based on OAN.
49. Although Colchester's OAN housing requirement remains soundly based, had this been calculated as LHN under the standard method, the appellant shows this would increase from 920 to 1,061 dpa. This is relevant mainly to illustrate that LHN was introduced to better achieve the Government's objectives to significantly boost housing supply. Even in this context, the Council can demonstrate a reasonably healthy housing land supply position and a relatively good track-record in delivery. Although this tempers the amount of weight given to the benefits this scheme makes towards meeting Colchester's housing needs, the supply position should be viewed as a floor rather than a ceiling. Indeed, the S1LP recognises this through Policy SP4 seeking to meet both the minimum housing requirement and to incorporate additional provision to ensure flexibility, choice and competition.
50. Furthermore, the Council accepts the evidence over Colchester's failure to meet its affordable housing requirement, with there being a growing shortfall in this regard. A specific need for affordable housing in Tiptree might be difficult to quantify but there was no dispute that the policy-compliant 30% (39 homes) provided in Marden Homes' proposals would help meet a Borough-wide need.

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<sup>15</sup> Letter from Development and Flood Risk Officer, Essex County Council dated 1 November 2021.

<sup>16</sup> Statement of Common Ground between Marden Homes and Colchester Borough Council: Housing Land Supply and Needs Position – 28 March 2022.

51. The proposals would help to meet a general need to boost the supply of housing and address a growing shortfall in the provision of affordable homes in the Borough. Notwithstanding the Council's favourable five-year housing land supply position, the 130 dwellings proposed, with 39 of these affordable, would provide social benefits to which I attach significant weight.

### **Other Benefits**

52. I attach moderate weight to the scheme's local economic benefits, in terms of those derived from both the construction work and the additional household consumer spend. Rather more limited weight is given to the 20% plus BNG and added tree canopy provision, as these help mitigate for some losses and provide for an appropriately designed scheme, rather than adding significant environmental benefits. The good accessibility of the site to shops and other services and the proposal making effective use of partly brownfield land are both factors reflective of an absence of harm, rather than providing positive environmental benefits. The RAMS payment and the other s106 contributions, as well as the increased Council tax revenue, are all factors which offset the impacts of the proposed housing, rather than providing much tangible net benefit.

### **Planning Balance**

53. Framework paragraph 11 refers to the presumption in favour of sustainable development. Whether this applies to this proposal requires me to consider whether or not the policies most important for determining the appeal are up-to-date. Those relating to the main issue of design, referred to in paragraphs 31-33, remain up-to-date by reflecting current Framework policy. The other most important policies pertain to the principle of the housing proposed. Of the S1LP policies, those most important are SP3, providing the North Essex spatial strategy, SP4, setting the Colchester housing requirement and SP6, relating to infrastructure and connectivity. These are all broadly supportive of this proposal and consistent with the Framework's objectives to secure sustainable development, through a balanced growth of homes and jobs in amounts commensurate with settlement capacity and connectivity.
54. However, the appeal site remains outside the currently adopted settlement boundary<sup>17</sup>, which still reflects SA Policy TIP1 and allocations that meet the now superseded 2001-2023 housing targets of CS Policy H1. Policy DP5 still safeguards part of the appeal site for employment use, which the Council confirms is no longer required for this purpose. The rest of the appeal site is 'white land' outside the settlement boundary, where CS policies ENV1 and ENV2 are restrictive of development. These extant policies remain most important for this decision but are out-of-date in respect of the contribution Tiptree is required to make towards the adopted housing requirement in S1LP Policy SP4.
55. Currently, the development plan does not provide the allocations necessary to bring forward the required minimum of 400 further dwellings in Tiptree. This will depend on the final adoption of the S2LP and then for the TNP to revise the settlement boundary and provide the necessary housing allocations. Considering the basket of policies most important to this decision in the round, I conclude them to be out-of-date and inconsistent with the Framework's social

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<sup>17</sup> Colchester Borough Council Local Development Framework Tiptree Inset Proposals Map October 2010.

objective for sustainable development. This is to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations.

56. In this case, Framework policies protecting areas or assets of particular importance provide no clear reason for dismissal. Assessed against the Framework policies taken as a whole, the adverse impacts of allowing the appeal would not significantly and demonstrably outweigh the scheme's significant benefits. This engages the Framework's presumption in favour of sustainable development which, as a material consideration, indicates this appeal be determined otherwise than in accordance with the development plan.

### **Conditions and Conclusion**

57. The conditions prepared by the Council, with the reasons for these and policy justification, had been agreed with the appellant and were discussed at the Inquiry. I have considered these against the advice in the Planning Practice Guidance on conditions and the tests set out in Framework paragraph 56. These are that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and the development to be permitted, enforceable, precise and reasonable in all other respects. I have made some amendments in the interests of succinctness and to avoid repetition. Subject to these conditions, and for the reasons explained, I conclude that the appeal should succeed.

*Jonathan Price*

INSPECTOR

## **APPEARANCES**

### *FOR THE APPELLANT:*

John Barrett of Counsel, instructed by Savills (Chelmsford)

He called

David Plant BA (Hons) PG Dip RIBA ARB – Managing Director, DAP Architecture Limited

James Firth BA (Hons) MSc MRTPI – Director, Savills

Sam Hollingworth – BA (Hons) MA MRTPI – Associate Director, Savills

### *FOR THE LOCAL PLANNING AUTHORITY:*

Simon Pickles of Counsel, instructed by Karen Syrett, Lead officer for Planning, Housing and Economic Growth, Colchester Borough Council (CBC)

He called

Simon Cairns BA (Hons) DipTP Dip BC MRTPI IHBC – Development Manager CBC

James Ryan BSc (Hons) MSc MRTPI – Planning Manager South Team CBC

Bethany Jones BSc (Hons) MSc MRTPI – Principal Planning Officer CBC

Catherine Bailey BSc Hons, MPhil, MA, CMLI – Senior Environmental Planner CBC

Cristina Howick MA MSc – Planning Director at Stantec (UK) Ltd

Martin Mason MSc DIC MILT – Strategic Development Engineer, Essex County Council

### *INTERESTED PARTIES:*

Councillor Jonathan Greenwood – Tiptree Parish Council and TNP Steering Group

Councillor Diana Webb – Tiptree Parish Council and TNP Steering Group

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

ID1 Marden Homes opening submission  
ID2 CBC opening submission  
ID3 15.3 Tiptree Neighbourhood Statement and additional papers  
ID4 Letter of 28 March 2002 from ADP on behalf of Mersea Homes  
ID5 Table extract from Sam Hollingworth rebuttal  
ID6 Table correlating the NDG, relevant development plan policies and Council evidence at the RTS  
ID7 Marden Homes closing submission  
ID8 CBC closing submission  
ID9 TNP Steering Group closing submission

All Inquiry core documents, proofs of evidence and other details of the proposal are/were available for a temporary period at

<https://www.colchester.gov.uk/info/cbc-article/?catid=neighbourhood-planning&id=KA-04043>

## **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.  
  
Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:  
  
DAP\_1432\_301\_03 – Proposed Site Layout  
DAP\_1432\_302\_03 – Proposed Storey Heights Plan  
DAP\_1432\_303\_03 – Proposed Bedroom Number Plan  
DAP\_1432\_304\_03 – Proposed Tenure Plan  
DAP\_1432\_305\_03 – Proposed Refuse and Cycle Plan  
DAP\_1432\_306\_03 – Proposed Parking Strategy  
DAP\_1432\_307\_03 – Proposed Materials Plan  
DAP\_1432\_308\_03 – Proposed Boundary Treatment Plan  
DAP\_1432\_309\_03 – Proposed Garden Size Plan  
DAP\_1432\_336\_01 – HT4.11R (Affordable)  
DAP\_1432\_337\_01 – HT4.11W (Affordable)  
1432\_310\_00 – HT 3.1  
1432\_311\_00 – HT 3.2  
1432\_312\_01 – HT 3.6R  
1432\_313\_01 – HT 3.6W  
1432\_314\_01 – HT 3.7  
1432\_316\_00 – HT 3.8

1432\_317\_00 – HT 3.9  
1432\_318\_00 – HT 3.10  
1432\_319\_00 – HT 3.10  
1432\_320\_01 – HT 3.11  
1432\_321\_00 – HT 3.12R  
1432\_330\_01 – HT 4.1  
1432\_331\_01 – HT 4.3  
1432\_332\_01 – HT 4.4  
1432\_333\_01 – HT 4.5R  
1432\_334\_01 – HT 4.5W  
1432\_335\_01 – HT 4.9  
1432\_336\_01 – HT 4.11R  
1432\_337\_01 – HT 4.11W  
1432\_338\_01 – HT 4.12R  
1432\_339\_01 – HT 4.12W  
1432\_341\_00 – HT5.10  
1432\_350\_01 – Flat Block A Floor Plans  
1432\_351\_01 – Flat Block A Elevation Plans  
1432\_352\_01 – Flat Block B Floor Plans  
1432\_353\_01 – Flat Block B Elevation Plans  
1432\_354\_01 – Flat Block C Ground Floor Plan  
1432\_355\_01 – Flat Block C First Floor Plan  
1432\_356\_01 – Flat Block C Second Floor Plan  
1432\_357\_01 – Flat Block C Elevation Plans

Reason: For certainty, to ensure that the proposed development is carried out as approved.

- 3) No works shall take place until an investigation and risk assessment, in addition to any assessment provided with the planning application, has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval, in writing, of the local planning authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the local planning authority. The report of the findings must include:
- (i) a survey of the extent, scale and nature of contamination, including contamination by soil gas and asbestos;
  - (ii) an assessment of the potential risks to human health, property (existing or proposed) including buildings, crops, livestock, pets,

woodland and service lines and pipes, adjoining land, groundwaters and surface waters, ecological systems, archaeological sites and ancient monuments;

(iii) an appraisal of remedial options, and proposal of the preferred options.

This must be conducted in accordance with all relevant, current, best practice guidance, including the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers'.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

- 4) Should the investigation and risk assessment secured by condition 3 above reveal the presence of contamination, no works shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been prepared and then submitted to and agreed, in writing, by the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

- 5) Any remediation scheme approved pursuant to condition 4 above shall be completed in accordance with the agreed details prior to commencement of any other works. The local planning authority shall be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification/validation report that demonstrates the effectiveness of the remediation carried out must be produced and is subject to the approval in writing of the local planning authority. Prior to first occupation of any part of the development hereby permitted, a certificate signed by a competent person confirming that any remediation works required have been completed in accordance with the approved scheme.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

- 6) No works shall take place, including any demolition, until a Construction Method Plan (CMP) has been submitted to and approved, in writing, by the local planning authority. The approved CMP shall be adhered to throughout the construction period and shall provide details for:
- on-site parking of vehicles of site operatives and visitors;
  - provision for on-site loading and unloading of plant and materials;
  - provision for on-site storage of plant and materials used in constructing the development;
  - the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - wheel washing facilities;
  - measures to control noise and vibration;
  - measures to control the emission of dust and dirt during construction;
  - a scheme for recycling/disposing of waste resulting from demolition and construction works;
  - a scheme to minimise the risk of off-site flooding caused by surface water run-off and groundwater during construction works and to prevent pollution;
  - confirmation that all delivery and worker vehicle movements to and from the site shall only take place between the hours of 0800 - 1800 Monday to Saturday and at no time on Sundays or Bank/Public Holidays
  - confirmation that all works of demolition and construction shall only take place between the hours of 0800 - 1800 Monday to Friday and 0800 and 1300 on Saturdays and at no time on Sundays or Bank/Public Holidays.

Reason: In order to ensure that the construction takes place in a suitable manner and to ensure that amenities of existing residents are protected as far as reasonable.

- 7) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 3, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 4, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 5.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that

the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptor.

- 8) Prior to the first occupation of the development, the developer shall submit to the local planning authority a signed certificate to confirm that the remediation works have been completed in accordance with the documents and plans detailed in Condition 5.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

- 9) No external facing or roofing materials shall be used in the construction of the development hereby permitted until precise details of the manufacturer, types and colours of these have been submitted to and approved, in writing, by the local planning authority. Development shall be carried out in accordance with the approved details.

Reason: In order to ensure that suitable materials are used on the development as there are insufficient details within the submitted planning application.

- 10) No part of the development hereby permitted shall be first occupied or brought into use until the method of surface water drainage as set in the submitted FRA and SuDS strategy, including an ongoing Maintenance Plan, has been fully installed and is available for use. The system installed shall then be operated and maintained in perpetuity in accordance with the approved scheme.

Reason: To minimise the risk of flooding both on site and off site.

- 11) Pursuant to condition 10 above, the applicant or any successor in title must maintain yearly logs of maintenance which should be carried out in accordance with any approved Maintenance Plan. These must be available for inspection upon a request by the local planning authority.

Reason To ensure the SuDS are maintained for the lifetime of the development as outlined in any approved Maintenance Plan so that they continue to function as intended to ensure mitigation against flood risk.

- 12) No works shall take place above ground floor slab level until full details of all landscape works have been submitted to and agreed, in writing, by the local planning authority. The landscaping works shall be carried out in accordance with the approved details and timetable. The details to be submitted shall include:

- Finished levels or contours where notable changes are proposed;
- Means of enclosure;
- Car parking layouts and other vehicle and pedestrian access and circulation areas;
- Hard surfacing materials;
- Minor artefacts and structures (e.g., furniture, play equipment, refuse or other storage units, signs, lighting etc.);

- Proposed and existing functional services above and below ground (e.g., drainage power, communications cables, pipelines etc. Indicating lines, manholes, supports etc.);
- Planting plans to include tree planting sufficient to achieve gain in canopy cover set out at table 2.8 of the tree Canopy Cover Assessment UTC-0357- 03-AIA dated 24 February 2022;
- Written specifications;
- Schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; and,
- Implementation timetables and monitoring programs.

Reason: To ensure that there is a suitable landscape proposal to be implemented at the site for the enjoyment of future users and also to satisfactorily integrate the development within its surrounding context in the interest of visual amenity.

- 13) Prior to the first occupation of any part of the development hereby permitted, a landscape management plan including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than privately owned, domestic gardens, shall be submitted to and agreed, in writing, by the local planning authority. The landscape management plan shall thereafter be carried out as approved at all times.

Reason: To ensure the proper management and maintenance of the approved landscaping in the interests of amenity and the character and appearance of the area.

- 14) A Landscape and Ecological Management Plan (LEMP) shall be submitted to, and be approved in writing by, the local planning authority prior to the occupation of the development. The content of the LEMP shall include the following:
- a) Description and evaluation of features to be managed.
  - b) Ecological trends and constraints on site that might influence management.
  - c) Aims and objectives of management.
  - d) Appropriate management options for achieving aims and objectives.
  - e) Prescriptions for management actions.
  - f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
  - g) Details of the body or organisation responsible for implementation of the plan.
  - h) Ongoing monitoring and remedial measures for habitats retained and created.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management bodies responsible for its delivery. The LEMP shall also set out (where the results from monitoring show that

conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. Development shall be carried out in accordance with the approved details.

Reason: To allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 (as amended) and s40 of the NERC Act 2006 (Priority habitats & species) as updated by the Environment Act 2021.

- 15) No works or development shall be carried out until an Arboricultural Implications Assessment, Arboricultural Method Statement and Tree Protection Plan in accordance with BS 5837, have been submitted to and approved, in writing, by the local planning authority. The details to be submitted shall include the retention of an Arboricultural Consultant to monitor and periodically report to the local planning authority the status of all tree works, tree protection measures, and any other arboricultural issues arising during the course of development. Development shall be carried out in accordance with the approved Arboricultural Method Statement.

Reason: An AMS is the specific recommendation of the submitted Tree Report and AIA ref 0357-03-AIA Revision C dated 24.02.2022 by Underhill Tree Consultancy supplied in support of the application. This is needed to ensure that the trees on site which are proposed to be retained are protected during the construction phase in the interests of visual amenity and biodiversity and because this the basis on which the scheme was assessed.

- 16) Prior to the commencement of development, a biodiversity gain plan be submitted to and approved in writing by the local planning authority. The plan shall accord with the Biodiversity Net Gain Assessment ref: JBA 21/349 ECO01a and accompanying calculations, demonstrating a minimum 10% gain calculated using the Biodiversity Metric, including information about the steps taken or to be taken to minimise the adverse effect of the development on the biodiversity of the onsite habitat and any other habitat and identify how the Habitat will be secured and monitored for at least 30 years and the mechanism to achieve it. Development shall be carried out in accordance with the approved plan.

Reason: To comply with the biodiversity net gain statement by James Blake Associates ref: JBA 21/349 ECO01a SR Rev A and to ensure that the scheme delivers a minimum 10% biodiversity net gain in line with Section 2 Local Plan policy ENV1 which requires development to demonstrate beneficial biodiversity conservation features, measurable biodiversity net gain of at least 10% in line with the principles outlined in the Natural England Biodiversity Metric, and habitat creation.

- 17) Development shall not be carried out unless and until a District Level Licencing Scheme (for Great Crested Newts) Certificate has been awarded by Natural England and a copy sent to the local planning authority for their records. Thereafter, the recommended mitigation measures set out in Chapter 4 of the Reptile Mitigation Strategy (ref JBA 21/349), in Chapter 4 of the Wintering Bird Survey (ref JBA 21/349) and in the Updated Bat Survey (ref JBA 21/346 ECO 03) as set out in the

section 'Discussion and Recommendations' shall be adhered to through the construction process.

Reason: To ensure that the recommendations of the supporting ecological surveys are carried out in the interest of on-site ecology and biodiversity in line with the Environment Act 2021 and Section 2 Local Plan policy ENV1 which requires development to demonstrate beneficial biodiversity conservation features.

- 18) The Electric Vehicle charging points and infrastructure as shown on Plan No DAP\_1432\_306\_03 (Proposed Parking Strategy) shall be installed prior to first occupation of the dwelling to which it relates. Once provided, the charging points and spaces shall be retained thereafter.

Reason: To encourage the use of ultra-low emission vehicles in line with the Framework.

- 19) Notwithstanding the provisions of Classes A, D and F of Part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 as amended (or the equivalent provisions of any order revoking and re-enacting that Order) no external alteration, porches or hard surfacing other than as shown on the approved plans, shall be carried out.

Reason: In the interest of visual amenity as it is considered that alterations to elevations, including the introduction of porches, has the potential to harmfully dilute the elevational treatment of the public facing aspects of the scheme. The use of additional hard surfaces also has the potential to remove landscaping to the detriment of visual amenity and biodiversity.

- 20) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 as amended (or any Order revoking or re-enacting that Order) the garages approved as part of the development shall be retained for the parking motor vehicles at all times and shall not be adapted or converted for use for any other purpose, including other uses ancillary to the residential use.

Reason: The garages on site form part of the off-street parking provision and therefore their retention for parking of cars and cycles is essential to retain adequate on-site parking provision in the interest of highway safety.

- 21) Notwithstanding the provisions of Class A of Part 2 Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 as amended (or the equivalent provisions of any order revoking and re-enacting that Order) no fences, walls, gates or other means of enclosure, other than any shown on the approved drawings, shall be erected forward of any wall of the dwelling to which it relates (including a side or rear wall) which faces a highway (including a footpath or bridleway).

Reason: In the interests of visual amenity.

- 22) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 as amended (or any Order revoking or re-enacting that Order) the garages approved as part of the development shall be retained for the parking motor vehicles at all times

and shall not be adapted or converted for use for any other purpose, including other uses ancillary to the residential use.

Reason: The garages on site form part of the off-street parking provision and therefore their retention for parking of cars and cycles is essential to retain adequate on-site parking provision in the interest of highway safety.

- 23) No part of the development hereby permitted shall be occupied or brought into use unless and until a Residential Travel Plan (RTP) has been submitted to and approved in writing by the local planning authority. The RTP shall include arrangements for the provision of residential travel information packs, objectives, targets, mechanisms and measures to achieve the targets and timescales for implementation, together with monitoring and review provisions. The RTP shall be implemented as approved.

Reason: To foster the use of more sustainable modes of travel.

- 24) No part of the development hereby permitted shall be occupied or brought into use unless and until the following have been completed in accordance with details that shall have previously been submitted to and approved in writing by the local planning authority:
- a) upgrading of the two bus stops which would best serve the proposal site;
  - b) the vehicular and pedestrian access arrangements as indicated on Plan No DR\_472\_14;
  - c) new sections of footway with dropped kerb/tactile paving crossing points along the B1023 Kelvedon Road and dropped kerb/tactile paving crossing point in Oak Road north of its junction with the B1023 Kelvedon Road as indicated on Plan No DR\_472\_14.

Reason: In the interest of highway safety and to foster the use of more sustainable modes of travel.

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