



Wivenhoe Town Council

Rebuttals to evidence submitted to PINS reference: APP/A1530/W/22/3305697

We are responding to the following submissions and finish with a brief summary

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Our responses are being submitted as one document for ease. We thank the Inspector for the opportunity to respond to submissions conflicting directly with our examined and adopted Neighbourhood Plan as voted for by an overwhelming majority of Wivenhoe residents.

Rebuttal of Proof of Evidence of James Firth

Page 5 - Planning Benefits

‘1 Delivery 120 new homes which will contribute towards CBC’s housing targets, specifically Wivenhoe’s need in line with the minimum requirements set out in WIV29 –Very Substantial weight in the planning balance due to the unmet housing need;’ We note that section one and two of the Local Plan already deliver a surplus percentage to requirements. This is without including windfall sites which have over the last 5 years has produced an average of a further 300 homes per year. Therefore, to lose this site allocation will in no way threaten the delivery of the Boroughs housing quotas.

‘2. Provision of 20% affordable housing in accordance with the site allocation, making a substantial contribution towards pressing housing need and assisting current wait lists – Very Substantial weight in the planning balance due to unmet affordable needs;’

Current CBC policy now demands 30% affordable housing should be included within residential proposals. Affordable provision can be met comfortably within the allocated site so it is difficult to see why this is a factor.

‘3. A very substantial quantum of new publicly accessible high-quality realm and landscaping will be provided, including formalised public access to the LoWS and very generous tree planting and soft landscaping– Very Substantial weight in the planning balance;’ The public already has access to the LoWS site! This sleight of hand simply **cannot** be considered a gain of the scheme. We would be happy to provide testimonials from a number of residents that have accessed this site for over 20 years.

‘4. Achieving a Biodiversity Net Gain score of 35.88% (above the emerging requirements). – Significant Positive weight in the planning balance’ If these figures are based on the release of the LoWS to the public then they need to be reassessed given the fact that this land is already available to the public.

'5. Surface Water flood risk and drainage controlled appropriately through an engineered design, achieving a betterment on site– Moderate weight in the planning balance;'
There is no recorded of flooding on the site ever. Therefore, this must not be considered to be a gain.

Page 6 *'The potential impacts of the appeal scheme have been assessed and I have concluded that the alleged harm to the landscape is overstated.'* This is a subjective 'opinion' offered by someone financially benefitting from stating it. This is disputed by all but the appellant and very strongly by Wivenhoe Town Council. We discuss our landscape concerns in detail elsewhere.

Page 8 ref 2.5

'comments received during the consultation process from statutory consultees were addressed by the applicant.' Wivenhoe Town Council are a statutory consultee and we can confirm concerns raised by us throughout the process have not been addressed.

Page 10 refers to an application (LPA Ref. 213515) by Manor Oak Homes Ltd to establish the surrounding built form. This application has also been 'Called in to Committee' because it does not conform to the land allocation in the WNP. Significantly the reason to recommend refusal is because their intention is to reconfigure the allocation for a new cemetery space. The site in the NP was orientated along the road to allow for an open and appropriate ending to the settlement boundary. Thus, providing a permanent view of open countryside on both sides of Elmstead road opposite the TW site. This decision by the WNP team was really important to local people. Also, it was approved of by the Government Inspector. We reiterate that the WNP is sound policy that protects the wishes of local residents and surely that is the fundamental purpose of a neighbourhood plan.

Page 14 - 5.17 references the position of the Sports Pitches. We refer to Sports England and the views of members of the various clubs at the football ground that these pitches will not be of any use to the clubs and the wider community if they are not delivered to a certain specification and accessibility issues are addressed. Which there is no reassurance they will be.

Page 18 - 6.11 refers to the location of a planned garden community adjacent to Wivenhoe. Although the latest concepts on master planning for this development are confidential, it should be stressed that there is a **significant risk** of the garden community straddling a dual carriage way and coming within a matter of yards from the football club. Which compounds and enhances the arguments to preserve open buffers zones at every opportunity for Wivenhoe. This buffer zone is strategically vital to Wivenhoe in order to prevent coalescence.

Page 28 the appellants states regarding landscape assessment that *'development of a nature similar to that proposed by the Appeal Scheme and is, by virtue of meeting design and policy criteria, considered acceptable in this area. It is fair to note that a degree of landscape harm must have been deemed acceptable at the time the settlement boundary was amended. Wivenhoe Town Council does not consider the introduction of housing north of the boundary identified in WIV 29 to result in **any** additional landscape harm to that anticipated within the*

Neighbourhood Plan. Our response to this is that after years of very careful consideration we deliberately set the development boundary so any future development would not be visible from the road.

Page 39 - 7.87 *'whilst from some locations housing to the north of the pylons will be visible from within the Cross Pit Local Nature Site, the nature of the change will be very limited and will not notably change the experience of walking through the area compared with a development that only extended to the south of the pylons.'* Our response is that if the response to the pandemic taught us anything, it is how important being in open spaces and enjoying all aspects of the natural world deeply effects our emotional and mental well-being. The residents of this town have deliberately chosen to live in an area surrounded by such spaces. Therefore, it is staggering to suggest that the visual interruptions of the landscape can be considered not detrimental. The existing footpath and space in shrub created by human access quite clearly proved just how much the public do use this space. equally fences have been moved in order to allow access to the field which has always been available in the past. Again, we reiterate that this is a valid neighbourhood plan designed by residents to reflect local wishes in direct accord with the intent of the Act.

Page 46 - 8.4 *'The Town Council sets out concern that the dispositions proposed will set a precedent for the other developments which fall within Neighbourhood Plan areas with an adopted Neighbourhood Plan. The Town Council doesn't acknowledge Section 38(6) of the TCPA that requires each planning application to be determined on its own individual merit, taking into account the development plan, as well as any other material considerations.'* As both parties in this appeal have referred to previous appeal decisions in making their case it is therefore entirely reasonable to conclude that deviation from policy in any Neighbourhood Plan at appeal could be justification to do so again in further similar cases. To disregard our Neighbourhood Plan once will set a precedent for future application in a similar vein. The other casualty of ignoring our Plan is that other Wards across the Borough could abandon their efforts to produce one because they are ineffectual in preventing unwanted development. Any trend of this nature that is based on previous decisions is not affected by the stipulation of 38(6) of the TCPA as the Neighbourhood Plan is clearly part of the development plan.

Page 47- 8.12. A water attenuation feature could add to the biodiversity of the wildlife site which is cited mainly for invertebrates. Only a small part of the site would be required. If it were situated in the far south east area of the wildlife site there would be no need to remove any mature oak trees as the strip of trees is less dense at that point. It would be necessary to run the surface water drains to the attenuation basin across the strip TW has not acquired to make use of the break in the tree row and an easement would be needed. However, the drainage layout for foul sewers similarly requires third party agreement to run a drain across the southern strip of land.

Page 49 - 8.19 *'Taylor Wimpey has now agreed a Deed of Easement with the third-party owner to legally be able to provide a foot and cycle path across the land to the south of the redline to facilitate this.'* We welcome this news and ask if negotiations are in place for a joint application on the whole site so an extension to the north of the pylons will not be deemed necessary. The location of the links should be shown and the links should be

designed to minimise walking distances to Paddock Way. The WNP requires a contribution to be paid towards creating a combined footpath/cycle track linking to the public footpath (FPNo 14)

This document states that *'The matter of the site's compliance with the Essex Police 'Designing Out Crime' document is not a disputed matter in this appeal. We point out that it is disputed by WTC and CBC Cllrs for Wivenhoe.*

Additionally, 'A concern was noted regarding the lack of provision for emergency vehicles to park adjacent to the new playing fields. This is not a stipulated requirement of the Neighbourhood Plan.' We would suggest this provision would fall under a more basic criteria such as a moral duty awarded to those using the facility.

As a more general observation, at no point does any evidence produced on behalf of TW make any suggestion that a reduction in the number of houses (given that TW has not acquired all of the site allocated in the WNP), or an increase in density would be a viable solution to the issues they have with the site protections as laid out in examined and adopted policy. In our opinion the omission of even a discussion of this option shows a lack of willingness which we believe has been in existence even prior to purchase of the site to resolve these issues. We would have hoped that a commitment to collaborate with consultees, and to conform with policy, would have been their intention.

We acknowledge the arguments that TW offer with reference to the layouts included in our submission. However, if we had access to the equivalent resources and financial backing TW have available, we are confident that we could produce a detailed and accurate layout that would fit within the original land allocation and provide 120 dwellings whilst respecting the policy protections in place. The layouts we submitted were schematic and demonstrated that a change in road layout could provide a solution to the perimeter restraints. i.e. backing gardens onto the perimeter is a space efficient way of avoiding tree roots. We are not able to commission more detailed layouts due to lack of funds. However, from a simple calculation on area and densities we can evidence it is possible to contain development within the original allocation. We also point out that schematic layouts do not incorporate other elements that will significantly reduce the land take necessary. These include architectural features such as terraced or semi-detached properties, blocks of flats and 3 storey homes. The appellant has not opted for any one-bedroom units which Wivenhoe Town Council would welcome. This is not meant to form a compelling list of ways to achieve a higher density but to demonstrate that the lower density is the commercial choice of the developer and not a direction of the Neighbourhood Plan.

Additionally siting the attenuation pond to wildlife area to the east would have a huge impact on the release of land for development.

It is therefore reasonable to conclude that an agreeable layout at the density of 30dph is entirely possible and meets with the general density across Wivenhoe. Also, that TW are not prepared to use their resources to facilitate this because their profit margins would be affected if they were to build such a scheme. Our assessment is that this land grab is fuelled

by commercial choice rather than any intention to build to the Neighbourhood Plan by presenting a development at a compliant density.

Wivenhoe Town Council considers it a strange admission that no effort has been made to formally test the site against the objectives set out in the SEA (which currently does not appear in the evidence base). The WNP WIV 29 was assessed in the SEA. The TW proposals would not do as well as the allocated site on Objective 2, Objective 3 and Objective 7. The SEA is a material planning consideration that strengthens the validity of examined Neighbourhood Plan and should be included in the evidence base.

Rebuttal of Arc's PROOF OF EVIDENCE

This document - not unexpectedly - lacks impartiality to a cringe inducing level. Although the appellant has pledged to do some planting on green spaces this does not compensate for the disturbance of existing habitats and indeed material changes to surrounding ditches and the established ecosystems around these ditches.

Although we have the upmost respect for professionals that have prepared any of the proof of evidence, and acknowledge their expertise far outweighs anything we could compete with we find it extraordinary that two professionally qualified parties (TW and CBC) can come to such differing conclusions about the harm caused by this scheme. We can only conclude that this assessment is tailored to the narrative of the commissioning body and is a subjective opinion rather than fact. We believe the view of the people that live here and enjoy the countryside daily are in this instance more relevant because of their evidenced investment in the landscape. We suggest that once commissioned to produce a report, the result of any investigation will be in line with the brief given by those commissioning it. We are not constrained in this manner. Our opinion is based on the human connection with our environment. This is a commonly held view locally and was never more tested than during the response to the pandemic when areas like this and the river footpaths were busier than our High Street. The pandemic also brought to the surface evidence of how engagement with open space can have a direct impact on health both physical and mental. As an example of how important the natural environment is to our residents it took mere minutes before our Cllrs were contacted to intervene when a contractor appointed by wimpy was attempting to fell an oak tree on this site. It would be realistic to assume that Wivenhoe has a higher number of people that value nature, landscape and biodiversity given they have chosen to live in a town surrounded by this. Our residents were the ones to demand the Town Council declare a Climate Emergency which led us to develop pilot schemes for environmental improvements that now inform the Boroughs rewilding program.

Arc's PROOF OF EVIDENCE started with the assumption that we hadn't produced an assessment of the landscape to inform the Neighbourhood Plan. This is **not** the case and illustrates that conclusions arrived at via assumption are not reliable. Impact on the landscape is included in Objective 7 of the SEA.

We do not agree – at a fundamental level - that any landscape scheme will obscure housing even after the years it will take mature. The value of the site currently is the long-range views and the light and breadth of sky this provides. This can only be maintained if the area is left open and is not impinged by the built form.

Creating a larger area of building and thus a smaller margin of surrounding habitat is detrimental to the established ecosystem. It would create greater disturbance and is more likely to have a detrimental effect on the ditch habitat due to the land drainage engineering. Existing wildlife benefits from terrestrial corridors where there is established cover and in the case of hibernating amphibians, undisturbed damp areas which are in evidence on this site. Our point is we have existing biodiversity and existing access to it and this is a vital component of understanding the value of this landscape.

Ref - 5.33 We do not see any logic in the suggestion that building over a larger footprint will be less environmentally destructive than building at a higher density in a smaller area. The establishment of "new habitat" by dint of planting is known to be poor mitigation for two main reasons:

1. It disrupts ecosystems and takes some years to re-establish a natural balance, during which time...
2. It displaces species from that habitat. If there is no natural **accessible** haven for those species during (re)construction, those species will be lost. Whilst avian species can return once habitats re-establish, terrestrial species are much less likely to re-populate due to prolonged absence and increasingly compromised wildlife corridors. It is known that Great Crested Newts are present in Wivenhoe's water bodies (including some within 1km of this site) but less well known where they migrate to for winter hibernation. Whilst eDNA testing can be an easy way of establishing presence in water bodies, it is less easy to establish hibernation territories, but equally as vital. We are not aware of any report that refers to any such investigation. Ditches and surrounding cover are important winter habitats. The wider these corridors are, the better. We appreciate that a Landscape and Visual Impact Assessment (LVIA) is not required to address this point but this is a key reason for requiring the footprint of this development to remain as committed by the Neighbourhood Plan.

Arc's POC Conclusion

Ref - 5.34 the environmental mitigation provided by planting additional trees is not disputed. However, tree planting should not be dependant on what it obscures from view. The trees could still be incorporated in the open space regardless of where the houses are situated and be classified as environmental mitigation.

Ref - 5.36 field mice, snakes and hedgehogs have all be identified in the proposed site expansion to the north of the pylons. As their habitat will not be limited to any site boundaries it is wrong to suggest these species, (plus others not specified) will not be impacted within the local wildlife site as they will visit there too. Also, it is disingenuous not to acknowledge that the overall development will add additional human and domesticated animal access to the Wildlife Site which will have a detrimental impact on it.

Ref - 7.2 - *'very limited change to the views'* our view is that the view would be **completely** different as evidenced in the visual representation. The estate would be visible right across the end of the field and truncate the length of view significantly This will signify urban sprawl and not open countryside at the end of the settlement boundary in stark contrast to the current perception.

Ref - 7.3 We note the landscape harm as set out by the actual allocation in the Neighbourhood Plan would not have been visible from Elmstead road.

Ref -7.5 We would argue that although there are a limited number of viewpoints this does not diminish their value. Indeed, one could argue that as these views are limited in number their value is greatly increased and appreciated. We must also consider the significant harm to be caused by the Local Plan to this area which makes these viewpoints critical to the character and identity of Wivenhoe.

Ref - 7.6 *'I conclude that the overall enjoyment of those visiting, what will become a publicly accessible area, will not be affected to any further degree compared with the housing development envisaged within the Neighbourhood Plan.'* How is anyone able to comment on how others enjoy something? Any individual's response to a view cannot be stipulated or assumed by anyone other than the individual themselves. For the record Wivenhoe Town Council utterly rejects this subjective assertion but wishes to draw attention, again, to the fact that this is already a publicly accessible area.

Ref - 7.9 As the view is only viable during daylight hours it is hardly relevant to mention floodlights at the football ground. Light pollution is clearly unwelcome and a perfectly valid consideration but these are very rarely used and one could argue when they are used at least they allow for sight of the depth and openness of the view to be appreciated. In direct contrast this development and especially the controversial proposal to the north of the allocated site will create significant additional and permanent light pollution. This response therefore seems to lack self-awareness.

We are aware of the lack of footpath along Elmstead road which is why it was addressed in policy by our Neighbourhood Plan. There is evidence of a footpath created by users that shows the amount of pedestrian access at this point. This path has been here for over 20 years and is in constant use as the road is not a safe way to walk children to the football club.

Ref 7.10 - It is suggested this is *'not a location that people visit to experience the view'* How has it been possible for the author of the document to determine this? Have any public surveys been conducted to establish this conclusion? Can they be shared with the Inquiry? Feedback from residents is that the view, the general setting and the feeling of living in a village are what brings residents and visitors to this area. Whilst we appreciate a little 'banter' is inevitable when dealing with external commercial interests we would hope that common sense, policy provision and the facts are not dismissed by sweeping generalisations. We fully expect to see heavy mention of this fine view in TW's marketing of the site alongside some nature based generic name.

Ref 7.11 – Once more this completely misses the point that the purpose of the Neighbourhood Plan was to protect residents wishes. If people enjoy the view of new planting (after 2 decades to mature obviously) more or less than the shifting of the season in an agricultural manner is entirely subjective. What is easy to predict is the greater majority of residents would prefer either of these options as a view instead of housing.

Ref 7.12 - We disagree with the ‘opinion’ given here. An opinion of any individual should have no more value than that of another. Although it could be argued that someone that has lived in an area over an extended period has a greater investment in that setting and therefore would have a more informed opinion on its value.

Ref 7.13 A hedge along Elmstead road blocking the view would be very unwelcome.

Ref 7.14 Elmstead Road in our opinion is a sensitive receptor. We refer to the different feeling entering Wivenhoe this way compared to the other two roads and the hugely detrimental effect of the Local Plan.

Comments on CBC’s PROOF OF EVIDENCE

We agree broadly with the assessment produced on behalf of the Colchester Borough Council (CBC) but wish to comment on two references to policy they have made. Those are;

5.26 The proposal to introduce built form into the northern part of the site will not ‘conserve the landscape setting of Wivenhoe’ as advised by the LCA B8 Landscape Planning Guidelines. Secondly, that the TCA would recognise the proposal to build north of the pylons as a ‘threat to townscape character’.

We wish it to be noted that more robust policy is being produced by CBC to ensure long term maintenance by developers of landscape planting. It is yet to be adopted but experience has taught us, with a significant number of sites we are familiar with, lack of maintenance is a problem. Therefore, the environmental benefits of mitigation promised are never realised. Equally our experience of the management company responsible for the other large TW site in Wivenhoe has been exceptionally negative. Residents inform us they want this company replaced due to unreasonable demands for financial contributions for public facilities they do not feel are justified. This may not form part of this examination but it justifies our cynicism that anything proposed for this development would be any different with regard to the management of open spaces and the long-term environmental management on site by a management company.

Rebuttal of Arc SUMMARY PROOF OF EVIDENCE

Ref 2.14 *‘It would appear the power line was used within the Neighbourhood Plan to demarcate the boundary without any specific landscape or visual analysis.’* Although no overall landscape or townscape character assessment was undertaken by the WNP team,

there were existing Colchester Borough documents that assessed the Wivenhoe landscape/townscape and Conservation Area.

These are listed in the WNP SEA. These were: Townscape Character Assessment, Chris Blandford Associates on behalf of Colchester Borough Council, June 2006 (Chris Blandford Associates); Landscape Character Assessment, Chris Blandford Associates on behalf of Colchester Borough Council, November 2005; Landscape Capacity of Settlement Fringes in Colchester Borough, Chris Blandford Associates 2005; Wivenhoe Conservation Area, Appraisal and Management Guidelines, Qube for Colchester Borough Council, 2007.

Members of the Neighbourhood Plan working group analysed and digested these reports. It was not thought necessary to duplicate this work, nor did we have the resources to commission an additional study nor should we if we had given the quality and volume of work already available. The most relevant document for this site is '*Landscape Capacity of Settlement Fringes in Colchester Borough*'. The TW site falls in area 17 of this report. The various sites allocated in the WNP were assessed relative to objectives in the SEA which included preserving the rural nature of Wivenhoe. We reiterate that our policy is valid, examined, adopted and sound.

As well as for landscape reasons, the northern part of the site was ruled out on two additional grounds. One was distance to facilities and public transport, the other was that the Plan needed to be as consistent as possible with the Local Plan in place at the time which showed the whole of the TW site as open space (see fig 34 of WNP). To accommodate the planned 250 dwellings in total it was necessary to use some of the land designated in the Local Plan as open space, but the working party wished to retain as much as possible as open space as explained in paragraph 17.32 of the WNP.

Please note. All the work conducted by the landscape consultant makes the assumption that we did not undertake any assessment of the landscape which is categorically and demonstrably incorrect.

Ref 2.16 '*The boundary of mature trees does contribute to visual amenity however Elmstead Road is not a sensitive receptor, this is not a location that people visit to experience the view, or where pedestrians pass by to connect to the local footpath network.*' We advise that people do visit this area to enjoy the current open space and there is no evidence provided by Arc that contradicts this. As previously stated in this response Elmstead Road in our opinion is a sensitive receptor. We refer to the different feeling entering Wivenhoe this way compared to the other two roads and the hugely detrimental effect of the Local Plan. There are in fact several well used footpath access points and connections along Elmstead Road and the immediate surrounding area.

Ref 2.17 '*The Appeal Scheme landscape proposals (CD1.73) include provision for the 35m gap in the hedgerow to be re-instated alongside the road verge and this will, over time, limit views from the road into the open space and across to the houses beyond.*' This is far from welcome as any interruption to the view, be that housing or hedgerow, will affect the enjoyment of a long open view of the open countryside.

Ref - 2.20 *'Elmstead Road, is not in my opinion a sensitive receptor and neither the landscape or the views towards it from Elmstead Road, will be harmed by the Appeal Scheme, as alleged within the reason for refusal.'* We agree with the reasons for refusal and not the opinion given in the Arc document. We also treat the word alleged with a generous pinch of salt given the application of local knowledge, policy and reality check to the subjective assertions in this document.

Rebuttal of DRAFT Statement of Common Ground and Draft Heads of Terms

Ref 7.8:- We note that this document states *'residential development extends to 3.74 hectares'*. This is the artificially produced area of the land TW consider can be built on and does not include areas they erroneously claim to be a 'constraint' to building. These spaces should be assessed as incidental open spaces and should be included within the area in any density calculations. Therefore, the whole area of 4.06 (as specified in the WNP) should be specified in the SOCG. Although we acknowledge that new measurements supersede the figure in the WNP, and note that via a new measurement the developable area, TW believe this area is in fact larger than stated in the WNP.

TW claim they will make the Wivenhoe Cross Pit Local Wildlife Site (LoWS) publicly available when in fact it is a designated local wildlife site and the public have long used the permissive paths in and around it. It is already open to the public! The reason for being specific about this is to point out that we believe the environmental mitigation is reliant on this as a gain. It is clear and obvious that something already available cannot be classed as a gain.

Ref 7.19. The density of the proposal is not agreed by Wivenhoe Town Council.

Ref 7.23. *'The Application has provided Net Gain Calculations and evidences a prospective future biodiversity net gain of 2.66 habitat units across the wider site, a net positive change of 35.88%. This is agreed to be acceptable subject to appropriate conditions securing the provision of the improved enhancement.'* This is a highly questionable statement given our response to 7.8 above. When you factor in the loss of habitat for established terrestrial species and what ever timescale is attributed to the "future" aspect of this desktop search for biodiversity that bears no relation to existing wildlife on this site.

Summary

Without this right of reply we would not have been able to correct the significant flaws, incorrect assumptions and commercial subjectivity submitted as evidence. We also need to reiterate, for the avoidance of doubt, that there are **no** 'constraints' despite the best efforts of the appellant to paint an alternative reality as it is perfectly feasible to build 120 dwellings on the allocated site.

There is one other incorrect assumption that weaves its way though these statements like a dangerous undercurrent. That is the assumption that the balance of power rests with those

seeking to rip up our Neighbourhood Plan. It does not. Our Plan is valid, examined, adopted and sound. The policies contained in the Plan expressly and explicitly follow the intent of the plan which is to protect the wishes of residents, protect the character and identity of Wivenhoe and prevent unwanted development that was not allocated in the Plan. The whole purpose of a Neighbourhood Plan, and certainly the only genuine reason to have one, is to provide a framework to restore the balance of power to local communities through the medium of adopted policy. No debate over policy would be possible without the anchor of the policies intent and the intent here is clear and leaves no compelling reason to dismiss sound policy, our Neighbourhood Plan or the democratic process.