

Elmstead Neighbourhood Plan 2013-2033

Submission Version

A Report to Tendring District Council on the Examination of the Elmstead Neighbourhood Plan

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Executive Summary

My examination has concluded that the Elmstead Neighbourhood Development Plan should proceed to referendum, subject to the Plan being amended in line with my recommended modifications, which are required to ensure the plan meets the basic conditions. The more noteworthy include –

- The amendment of the settlement boundary at the southeast corner of Lanswood.
- Removing reference to technical requirements related to space heating demands and remove all reference to post occupancy evaluation conditions, whole lifecycle carbon emission assessment and energy and climate statements.
- Removing key views 19-23.
- Amending requirements in the Village Core to ensure that they only relate to the construction of new buildings and requires that development does not result in the loss of existing open space unless it relates to community uses.
- Requires contributions under the Managed Traffic policy to those that meet Regulation 122 tests and are triggered by development that leads to a *significant* increase in traffic on Clacton Rd
- Remove policies covering the protection of the green and blue infrastructure network in the areas inside the Garden Community.
- Contributions to health and well-being facilities to have to be triggered by a request from the North East Essex Clinical Commissioning Group.

The referendum area does not need to be extended beyond the Plan area.

Introduction

1. Neighbourhood planning is a process, introduced by the Localism Act 2011, which allows local communities the opportunity to create the policies that will shape the places where they live and work. A neighbourhood plan does provide the community with the ability to allocate land for particular purposes and to prepare the policies that will be used in the determination of planning applications in its area. Once a neighbourhood plan is made, it will form part of the statutory development plan alongside the policies in the Tendring District Local Plan 2013-2033 and Beyond: North Essex Authorities' Shared Strategic Section 1 Plan and the Tendring District Local Plan 2013-2033 and Beyond Section 2, which was adopted in January 2021. Decision makers are required to determine planning applications in accordance with the development plan, unless material considerations indicate otherwise.
2. The neighbourhood plan making process has been undertaken under the supervision of Elmstead Parish Council. A Steering Group was appointed to undertake the Plan's preparations.
3. This report is the outcome of my examination of the Submission Version of the Elmstead Neighbourhood Development Plan. My report will make recommendations, based on my findings, on whether the Plan should go forward to a referendum. If the Plan then receives the support of over 50% of those voting at the referendum, the Plan will be "made" by Tendring District Council.
4. Accompanying the Neighbourhood Plan is a proposed Neighbourhood Development Order which I was also appointed to examine. That will be the subject of a separate report and is not considered within this report.

The Examiner's Role

5. I was appointed by Tendring District Council in September 2023, with the agreement of Elmstead Parish Council, to conduct this examination.
6. For me to be appointed to this role, I am required to be appropriately experienced and qualified. I have over 45 years' experience as a planning practitioner, primarily working in local government, which included 8 years as a Head of Planning at a large unitary authority on the south coast, but latterly as an independent planning consultant and director of my neighbourhood planning consultancy, John Slater Planning Ltd. I am a Chartered Town Planner and a member of the

- Royal Town Planning Institute. I am independent of Tendring District Council and Elmstead Parish Council, and I can confirm that I have no interest in any land that is affected by the Neighbourhood Plan.
7. Under the terms of the neighbourhood planning legislation, I am required to make one of three possible recommendations:
 - That the Plan should proceed to referendum on the basis that it meets all the legal requirements.
 - That the Plan should proceed to referendum, if modified.
 - That the Plan should not proceed to referendum on the basis that it does not meet all the legal requirements.
 8. Furthermore, if I am to conclude that the Plan should proceed to referendum, I need to consider whether the area covered by the referendum should extend beyond the boundaries of the area covered by the Elmstead Neighbourhood Plan area.
 9. In examining the Plan, the Independent Examiner is expected to address the following questions:
 - Do the policies relate to the development and use of land for a Designated Neighbourhood Plan area in accordance with Section 38A of the Planning and Compulsory Purchase Act 2004?
 - Does the Neighbourhood Plan meet the requirements of Section 38B of the Planning and Compulsory Purchase Act 2004 - namely that it specifies the period to which it is to have effect? It must not relate to matters which are referred to as “excluded development” and that it must not cover more than one Neighbourhood Plan area.
 - Has the Neighbourhood Plan been prepared for an area designated under Section 61G of the Town and Country Planning Act 1990 and been developed and submitted by a qualifying body?
 10. I can confirm that the Plan, if amended in line with my recommendations, only relates to the development and use of land, covering the area designated by Tendring District Council, for the Elmstead Neighbourhood Plan, on 30th November 2020.
 11. I can also confirm that it does specify the period over which the Plan has effect, namely the period from 2013 up to 2033.
 12. I can confirm that the Plan does not contain policies dealing with any “excluded development”.
 13. There are no other neighbourhood plans covering the area covered by the neighbourhood area designation.
 14. I am satisfied that Elmstead Parish Council as a parish council can act as a qualifying body under the terms of the legislation.

The Examination Process

15. Once I had reviewed the submitted documents, my first task was to conduct a site visit to Elmstead. That was carried out on Wednesday 23rd November 2023.

16. I approached the village from the direction of Frating Green and I orientated myself by driving through the village, along the A133. As I had arrived during the early morning “rush-hour” period, I parked up opposite the community centre and I was able to observe the traffic conditions at the Budgens crossroads, as well as gauging the volume and nature of vehicles using Market Field School. I then drove westwards out of the village towards Colchester, which enabled me to appreciate the relationship between the proposed garden community, the rough location of the proposed link road and the strategic landscape gap, proposed in the separate Garden Community DPD and the parish’s proposed green landscape buffer to the west of Elmstead Market.
17. I then turned north up Tye Road and I visited the farm/business complex at Allen’s Farm, taking in the important views enroute and the local green space around Allen’s Reservoir. I returned to Elmstead Market and located the primary school and other local green spaces within the village, and I drove up to the Church of St Anne and St Laurence-at the far end of Church Road. Re-entering the village, I saw each of the key locations identified for improvement in Policy ELM 13.
18. I drove out of the village along Bromley Road, and I was able to see the proposed corridor of significance. I spent some time looking at the agricultural buildings, commercial operations and vehicle / trailer storage on the land north of Clacton Road, which was subject to Regulation 16 representation, and I explored some of the new commercial and residential developments at Lanswood, including visiting the barn which was the subject of Mr Hill’s objections. I drove out through the southern leg of the parish.
19. Upon my return from Essex, I prepared the document entitled Initial Comments of the Independent Examiner, dated 27th November 2023, which asked questions of both the Parish Council and Tendring District Council.
20. Upon receipt of the respective responses to the Initial Comments which were both received on 11th December 2023, I concluded that I would need to call for a public hearing to address matters relating in part to the Neighbourhood Plan as well as the Neighbourhood Development Order. I set out my reasons in the document entitled Additional Comments of the Independent Examiner, dated 2nd January 2024. It laid out the general matters that I wish to be discussed at the hearing and that was followed up by the publication of my Notes of Public Hearing, which I issued on 8th January 2024. This confirmed the date of the hearing to be 8th February 2024, as well as the venue being the Elmstead Community Centre. The note set out the arrangements for the hearing, the parties to be invited to participate and the questions that would form the basis of the day’s discussions.

21. That hearing started at 10am and lasted until the middle of the afternoon. I was grateful for the constructive approach taken by all parties, at the hearing. One of the issues discussed, related to the drawing up of the settlement boundary and I sought clarification at the hearing of the extent of the ownership of Mr Clarkson, who had, through his agents, proposed a revised settlement boundary along the north side of Clacton Road. That was sent to me on 28th February 2024.
22. At the hearing, I also asked for all parties that had submitted comments at Regulation 16, should be invited to give me any views as to whether the recent changes that have been published to the National Planning Policy Framework would have any implications for my examination of this plan. I also raised the question of the statutory consultation on the HRA and SEA screening opinion and requested as a separate consultation with Natural England, Historic England and the Environment Agency. I received a response from Tendring District Council, with copies of the relevant correspondence on 8th April 2024.

The Consultation Process

23. Much of the consultation on the Neighbourhood Planning took place during the Covid pandemic and this shaped how much of the public consultation was carried out.
24. The initial decision to prepare a neighbourhood plan was taken by the Parish Council, in July 2020 and the neighbourhood area was subsequently designated by Tendring District Council in November 2020.
25. An initial invitation to become involved with the preparation of the plan, was sent out to all householders and publicised via Facebook and the first public meeting was held over Zoom on 24th February 2021, which was attended by 20 members of the public.
26. In March 2021, an initial survey was distributed to all households and businesses in the Parish.
27. A second public Zoom session was held on 4th May 2021. The Steering Group were invited to make a presentation at a cricket club community event held on 25th September 2021. Four focus group sessions were held at the Community Centre on 26th October 2021 to discuss draft policy ideas, and this was followed up by a public exhibition held on 6th November 2021.
28. A second survey was distributed to all the parish's properties and businesses, in December 2021.
29. All this work, noted in the preparation of a Pre-Submission version of the neighbourhood plan, which was subject to, what is known as a Regulation 14 consultation, which ran for six weeks from 1st August 2022 to 25th September 2022. This consultation produced only 4 responses from residents and 10 responses came from statutory

consultees and landowners. These are set out in Appendix H of the Consultation Statement and are summarised in Appendix I.

30. I am very satisfied that the community has had ample opportunity to be consulted and to be able to influence the content of this neighbourhood plan despite the constraints imposed by the Covid pandemic.

Regulation 16 Consultation

31. I have had regard, in carrying out this examination, to all the comments made during the period of final consultation, which took place over a six- week period, between 18th September 2023 and 30th October 2023. This consultation was organised by Tendring District Council, prior to the Plan being passed to me for its examination. That stage is known as the Regulation 16 consultation.
32. In total, 14 responses were received, including: Tendring District Council, National Highways, Historic England, Essex County Council, Natural England, Sports England, Anglian Water Services Ltd, Essex Police, Essex Bridleways Association plus Lawson Planning partnership Ltd on behalf of Mr George Clarkson, Phase 2 Planning and Development Ltd on behalf of Hills Building Group, Brooks Leney on behalf of Mr A Massink, Strutt and Partners on behalf of Welbeck Land and Lichfield and Partners on behalf of Latimer(Tendring Colchester Border Garden Community) Developments Ltd.
33. I have carefully read all the correspondence and I will refer to the representations where relevant to my considerations and conclusions in respect of specific policies or the Plan as a whole.

The Basic Conditions

34. The Neighbourhood Planning Examination process is different to a Local Plan Examination, in that the test is not one of “soundness”. The Neighbourhood Plan is tested against what are known as the Basic Conditions as set down in legislation. It will be against these criteria that my examination must focus.
35. The five questions, which seek to establish that the Neighbourhood Plan meets the basic conditions test, are: -
- Is it appropriate to make the Plan having regard to the national policies and advice contained in the guidance issued by the Secretary of State?
 - Will the making of the Plan contribute to the achievement of sustainable development?

- Will the making of the Plan be in general conformity with the strategic policies set out in the Development Plan for the area?
 - Will the making of the Plan breach or be otherwise incompatible with EU obligations or human rights legislation?
 - Will the making of the Plan breach the requirements of Regulation 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017?
36. On 19th December 2023, the Secretary of State published a new version of the National Planning Policy Framework. I initially offered the two main parties, the opportunity to comment on whether any of the changes had implications for my consideration of the basic conditions and this opportunity was accepted by the Parish Council who made comments which related to support for community housing schemes contained in the latest version. After the hearing and at my request, the District Council wrote to all Regulation 16 parties asking for their views on whether the changes had implications for my examination. No new issues were raised in the responses that I have been sent and I am generally satisfied that the change in the national policy framework does not have any significance in terms of my conclusions.

Compliance with the Development Plan

37. To meet the basic conditions test, the Neighbourhood Plan is required to be in general conformity with the strategic policies of the Development Plan, which in this case is the Tendring District Local Plan 2013-2033 and Beyond: North Essex Authorities' Shared Strategic Section 1 Plan and the Tendring District Local Plan 2013-2033 and Beyond Section 2, which was adopted in January 2021. The development plan for this parish also includes the Essex Minerals Local Plan and the Essex and Southend Waste Local Plan. However, as these latter plans deal with "county matters" which are classed as they cover "excluded development", and therefore they are not relevant to this examination.
38. The District Council, in its response to my Initial Comments, identified the policies in the local plan which it considers to be the strategic policies which the neighbourhood plan is required to be in general conformity with.
39. Policy SPL1 sets out the settlement hierarchy for the district and the new Tendring Colchester Border Garden Community is in the highest tier of the hierarchy, with Elmstead Market being described as a rural service centre. Policy SP2 relates to settlement development boundaries, where imposed, as in the case of Elmstead Market, that within the boundary there is a general presumption in favour of development.
40. Policy LP1 establishes the overall level of development expected to be delivered across the district, with an expectation of at least 11,000 net additions, of which 1000 would have been delivered through the new

garden community. The mix of dwelling size, types and tenure is dealt within Policy LP2, and affordable housing requirements are set in Policy LP5. Rural exception sites are to be supported on sites adjoining rural service centres according to Policy LP6. Policies affect in the rural economy are set out in Policy PP 13.

41. The proposed garden community is the subject of its own development plan document which has been submitted to the Secretary of State and it is expected that it's examination will commence later in the spring.
42. My overall conclusion is that the Neighbourhood Plan is in general conformity with the strategic policies in the adopted Tendring Local Plan.

Compliance with European and Human Rights Legislation

43. Tendring District Council appointed Place Services – which is a consultancy arm of Essex County Council, to prepare a screening report on the Pre-Submission draft of the neighbourhood plan. It produced a Draft Report, dated November 2021 which concluded, that a full strategic environmental assessment, as required by EU Directive 2001/42/EC which is enshrined into UK law by the “Environmental Assessment of Plans and Programmes Regulations 2004”, would not be required. At that stage, there should have been consultation with the 3 statutory consultation bodies, Historic England, Natural England and the Environment Agency.
44. At the hearing, I asked that the consultation on the draft screening report should be carried out and responses were received from Historic England dated 15th March 2024, Natural England dated 25th March 2024 and from the Environment Agency dated 3rd April, all confirming that they agreed with the report's conclusions, namely that an SEA was not required. No response appears to have been received from Historic England. Based on the responses, I note that Tendring District Council has now confirmed its screening determination that an SEA is not required.
45. In the same draft report, Place Services concluded that the plan would not be likely to have a significant adverse impact on any European Protected sites. Again, the required consultation with Natural England was not carried out and that matter has now been rectified and Natural England has confirmed its view that an Appropriate Assessment would not be required. I note that the District Council, this time as the Competent Authority has screened out the plan under the Conservation of Habitats and Species Regulations 2017 – the Habitat Regulations.
46. I am satisfied that the basic conditions regarding compliance with European legislation, including the 2017 introduced basic condition regarding compliance with the Habitat Regulations, are met. I am also content that the plan has no conflict with the Human Rights Act.

The Neighbourhood Plan: An Overview

47. I must firstly commend the Parish Council and the Steering Group for both the amount and the quality of the work that has been put into this neighbourhood plan exercise, bearing in mind that the Parish Council only commenced work on a neighbourhood plan for Elmstead in 2020 and that there has been an intervening global pandemic to deal with.
48. I can appreciate that the drive to prepare a neighbourhood plan was prompted by the scale of new development that has taken place in and around Elmstead Market over recent years. Clearly the Parish Council has recognised the community's desire to grasp the opportunities offered by neighbourhood planning to regain some control over the planning policies that will guide development in the parish in coming years.
49. The production of this neighbourhood plan has run in parallel with the emerging Development Plan Document relating to the Tendring/ Colchester Borders Garden Community, which is a key strategic allocation in the adopted local plan. The Parish Council has displayed a high degree of insight, by recognising that the planning of this important strategic site, essentially falls outside the scope of the neighbourhood plan, although it does fall within the parish and the plan area.
50. The delivery of this new garden community is rightly treated as a strategic matter and preparing a masterplan on a comprehensive basis must be in the interests of good town planning practise and it would be inappropriate for a neighbourhood plan to be seeking to influence that plan document, especially as it would only cover part of the new community's area.
51. I appreciate that this has been recognised by the Steering Group, but there still are instances where the neighbourhood plan, whether by way of policy or through supporting text, still tries to influence the development plan document. This has prompted the Regulation 16 representations by Lichfields who represent the promoters of the Garden Community site.
52. I consider that the neighbourhood plan, whilst covering part of the new settlement, should leave all plan and policy making appertaining to it, to the proposed DPD. I have made a number of proposed modifications to policies, to ensure that, individually and collectively, they do not undermine the strategic policies in the adopted local plan in as much as it relates to the garden community. However, I do not feel that it is necessary, as suggested by Lichfields, to include a new separate policy to state that the policies in the plan do not apply to the new Garden Community as that is dealt with, where appropriate, in the individual wording of the policies.

53. The Parish Council remains a major stakeholder in influencing how the new garden community is to develop, but it should do that as a consultee and through the DPD process, rather than through this neighbourhood plan.
54. My overall conclusion is that, taken as a whole, the neighbourhood plan will deliver sustainable development. That is another of the basic conditions. It is a locally distinct plan which seeks to address key issues which are important to the local community. It extends the Local Plan's settlement boundary to reflect the recent developments and identifies countryside areas between adjacent settlements that warrant protection and discourage ribbon development. It encourages the construction of smaller dwellings and allocates the community centre site for affordable housing to meet local needs, as well as influencing the tenure types of affordable housing. It puts forwards a design code to influence new development as well as protecting important views and local green spaces and maps areas of green and blue infrastructure. It contains policy to enhance the vitality of the village centre and proposes an imaginative new green ring around the village whilst at the same time protecting local community uses.
55. In several instances, I have had to make recommendations for modifications to bring the policy into line with Secretary of State policy and advice, particularly regarding the setting of local energy standards. I appreciate that my deletion of large parts of Policy ELM8 may be a disappointment, but the role of neighbourhood plans in setting technical standards is now clear, following the publication of a new Written Ministerial Statement.
56. My recommendations, in the main, have concentrated on the wording of the individual policies but in some instances, I refer to the supporting text. However, I stress that there will be many consequential changes needed to the supporting text and indeed the appendices, to reflect my policy recommendations. It is important that the supporting text recognises the policy changes so that the plan still reads as a coherent statement of policy.
57. Equally, in some cases the supporting text will require updating as matters have inevitably moved on since the submission version was drafted. Some of the Regulation 16 comments, for example from Essex CC offer helpful suggestions. The extent of the amendments and the rewriting of the supporting justification are beyond my remit as examiner. I see my role as concentrating on the wording of policies which will be used to determine planning applications. I will leave it to the Steering Group and its consultants, to work with the planners at Tendring District Council to agree the changes to the supporting text when preparing the Referendum Version of the plan, which will have to be published alongside Tendring District Council's Decision Statement.

58. There is one matter that I specifically raised at the hearing and that is that the mapping should be updated to reflect the recently developed sites, for example Plan F shows sites which had at that time only having been granted planning permission.
59. Finally, I must particularly commend the drafting of the plan policies, and this is reflected by the fact that so many of the policies have emerged from this examination without requiring me to recommend modifications to meet basic conditions.

The Neighbourhood Development Plan Policies

Policy ELM1: Settlement Development Boundary

60. The plan could have just accepted the Local Plan's development boundary, but the Parish Council is proposing a considerable enlargement of the settlement boundary eastwards, where commercial and residential developments have taken place, in recent years, in an area which is now described as Lanswood. I consider this is a pragmatic and realistic recognition of the significant growth around the edges of the village which has taken place in recent years. I heard at the hearing that residents of Lanswood consider themselves to be a separate community.
61. I sought to understand the basis upon which decisions were taken to define the new settlement boundary by the Steering Group, which, in part was prompted by two Regulation 16 representations. This was a topic that was discussed at the hearing, and I was subsequently provided with a paper produced by the Parish Council's planning consultants which set out the Steering Group's approach, which was described as building upon the work that have been carried out by the District Council. The additional criteria used were prompted by the following questions:
- “what is the functional relationship to the physical form of the built-up area?”
 - “what is the functional relationship to the use of the built-up area?”
62. I have no reason to challenge this approach or criteria. I heard that most of the barn type buildings behind the Clacton Road frontage, remain in agricultural use. These barn structures are of a type which one would expect to find in the countryside location especially if they are in agricultural use. Whilst these buildings do not contribute to the openness of the countryside, the two parcels of land directly behind the Clacton Road hedge, are undeveloped areas of land.
63. It has now been clarified that the Regulation 16 objector, Mr Clarkson only owns a parcel of the land on the east side of the access road opposite the entrance to Beth Chatto's Garden. His representation is

proposing that the Elmstead Market settlement boundary should be extended to include all the barns and the undeveloped parcels of land on the road frontage so there would be continuity of the built-up area extending from Elmstead Market into Lanswood. That is something that the Parish Council is anxious to avoid.

64. I was advised that the objector had development aspirations on his land, but in terms of meeting the local plan's housing numbers there is no onus placed upon the neighbourhood plan, to have to identify additional land for residential or commercial development for the duration of the plan period. I therefore consider that it is legitimate for the neighbourhood plan to determine the settlement boundary as a matter of a local discretion, and it is appropriate for the qualifying body to recognise that these parcels of open land and farm buildings play an important role in the separating the main village from Lanswood. I do not agree that its exclusion from the settlement boundary would result in the policy breaching the basic conditions.
65. Clearly if in the future, the overall planning context for the village changes, and more land is required for development or the agricultural uses on the site cease, then the boundary could be revisited as part of a review of the neighbourhood plan. I would, however, opine that it is an unrealistic expectation to imagine that the buildings would be removed, and the land returned to open countryside, as suggested in paragraph 5.8 of the plan. However, I do not intend to remove reference in the final part of Clause C as it only offers support for development that achieves that physical and visual separation. That could be possible, if future redevelopment proposals came forward on the commercial land to the east.
66. I have noted that some other representations have highlighted the development potential of land around the village, but in view of the lack of a housing figure for the plan to have to accommodate or allocate, then this would only be a matter that is required to be faced at the time of the review of the neighbourhood plan or the rolling forward of the Local Plan.
67. The exclusion of the land at the south-eastern edge of the Lanswood settlement raises different issues to the Clacton Road site. At the hearing, the Parish Council conceded that the omission of the two residential properties and their gardens had been a drafting error and agreed that these should be contained within the settlement boundary.
68. The other issue relates to the exclusion of the barn building on the edge of the settlement. I heard, from the landowner, that the building had not been used for agricultural purposes for many years and in fact there has been intervening uses including car repairs carried out within the building. My view is that this building should be treated as a brownfield site and upon redevelopment, its replacement with housing could have a beneficial impact on the urban edge, removing a large

structure and it would be more in character with the new housing which has taken place on either side of the barn, especially when viewed across the open field from Frating Green. I consider that the field edge will be a more logical settlement boundary and I will propose the settlement boundary changes as shown in my recommendation.

69. I have considered whether it is necessary to specifically refer to rural exception sites as suggested by one comment, but I believe that this form of development which would only be outside of a settlement boundary and so would be covered by Clause C.

Recommendation

Amend the settlement boundary at the southeast corner of Lanswood to include within the settlement the area contained within the red line, as shown below.



Policy ELM2 – Protecting the Setting of Elmstead Market

70. I appreciate this is a particularly sensitive issue for the local community. I can, to some extent, understand the concern that the eastward extension of the village, with the Lanswood settlement, could be replicated on the land to the west of the village. The community's underlying fear is that could lead to its coalescence with the proposed Garden Community development with the village subsumed.

71. The draft Tendring / Colchester Garden Community Development Plan document, which is guiding the masterplanning of the proposed new community, is imposing a requirement to the scheme to incorporate a strategic green gap between the new A120–A137 Link Road and business parks and its plan area boundary, intended to

protect the open countryside and to maintain the “the long-term physical and visual separation of Elmstead Market and a number of key heritage assets”.

72. I explored, in my Initial Comments document, what the Parish Council views would be, in terms of acceptable uses within its proposed green landscape buffer, having regard to its comments which are set out in the supporting text of the policy (para 5.13) that the DPD was permitting “not only development suited countryside but also allow development for outdoor sports and recreation, cemetery/burial grounds or allotments”. I needed to be convinced that such uses, if included in the buffer, would undermine the objective of maintaining a clear visual and physical break between the two communities.
73. The Parish Council explained its aim was that, as well as maintaining spatial openness, it was seeking to retain the buffer’s “essential countryside landscape character”. The responses pointed to the evidence base which supports the gap, but I can find no evidence within the document to suggest that recreational uses would not meet the criteria set out in the policy.
74. The Parish Council proposed a modification, in its response to my Initial Comments, for my consideration, alternative wording to change criteria (iv) so it would only support development which would “protect and reinforce the positive features of the landscape in the Green Landscape Buffer, but where the use and development of land will comprise no urbanising effect, by way of the location and scale of buildings and structures”.
75. This was the topic of discussion at the hearing, and I wanted to understand the expectations of Parish Council as to what could be construed as having “urbanising effects” and the implications of that. The discussion did arrive at a conclusion that the criteria set out in criteria B already provide an appropriate set of considerations for development proposals within the Green Buffer Area as originally drafted.
76. I therefore propose that the policies should remain, without modification but someone supporting text will need to be modified, for example, by the deletion of paragraph 5.13. This will in part address some of the concerns from Lichfields in respect of pre-empting decisions that will rightly be covered by the Garden Community DPD

Recommendation

Delete para 5.13 of the supporting text.

Policy ELM3: Gaps between Settlements

77. This policy is again supported by an evidence paper, which was prepared to support the Parish Council’s aspirations to prevent the

coalescence of the village with neighbouring settlements. I am satisfied that the defined local gap on the south side of Clacton Road does have a role in preventing the infilling of the open land between Lanswood and Elmstead Market which will maintain the two communities' separate identities.

78. In terms of the corridors of significance, I did have some initial concerns that the distance between the edge of the built-up area in the parish and Frating Hill, along the A137 Clacton Road and to the north towards Great Bromley, along Bromley Road, is significant, and that there is very little likelihood of actual coalescence taking place, especially as the land in question is covered by countryside protection policy. However, the policy, whilst entitled "Gaps between Settlements" states, in Section C, that the policy is also wishing to restrict harmful ribbon development. I find the evidence contained within the Landscape Appraisal document completed by LANdesign Associates compelling, supporting the neighbourhood plan's desire to protect the rural character of the approach to the village from the east.

Policy ELM4: The Former Elmstead Community Centre

79. I have no comments to make on this policy, noting the Parish Council's desire to promote an affordable housing scheme designed to meet local needs on the land which it owns and can dispose of. This policy supports the accompanying Neighbourhood Development Order, although that is not part of this report.

Policy ELM5: Affordable Housing

80. I have been provided with evidence that the parish of Elmstead Market is a designated rural area under Section 159 of the Housing Act 1985, contrary to a statement made by one of the Regulation 16 consultees. This designation allows the threshold for the delivery of affordable housing to drop from 11 down to 6 units, as set out in the NPPF. I therefore do not see any reason to challenge the lower threshold within the parish. The policy also allows for the payment of a financial contribution in lieu of on-site provision if it is allocated for affordable housing elsewhere in the village.

81. Setting the threshold at 25% for the requirement for affordable housing to be First Homes, is in line with Secretary of State's expectations are set out in Planning Practice Guidance. I am satisfied that the remaining split of 70% affordable homes for rent and 5% share ownership is justified by evidence contained within the Housing Needs Assessment, which has been commissioned by the Parish Council from AECOM.

82. I am satisfied that the policy is appropriate and is supported by robust evidence.

Policy ELM6: First Homes

83. The Secretary of State policy does recognise that neighbourhood plans can seek a higher minimum discount than the minimum 25% which is on the national benchmark set out in the PPG, so long as it is justified on the basis of need.
84. I am satisfied that this need for a higher discount has been specifically addressed in paragraph 80 of the Housing Needs Assessment.
85. I am content that policy meets the basic conditions.

Policy ELM7: Housing Mix

86. The NPPF states that in rural areas, planning policies should be responsive to local circumstances and support housing developments that reflect local needs. I recognise the desire of the Parish Council to rebalance the current mix of homes to better reflect local need.
87. On my site visit, I saw for myself, the predominance of larger properties in many of the most recent developments. I consider that the case for requiring the delivery of smaller dwellings, is properly evidenced by the Housing Needs Assessment. I propose to give greater clarity to the policy by a minor drafting modification, replacing “should seek” to “will be expected”.
88. I do not believe that the policy needs to be caveated by reference to the underlying character of the area as suggested by one representation, as that could be an argument to maintain a predominance of larger dwellings which could undermine the objective of the policy.

Recommendation

Replace “should seek” with “will be expected”.

Policy ELM8: Zero Carbon Buildings

89. I expressed concern at the Initial Comment stage that the policy was contrary to Secretary of State’s Written Ministerial Statement that had been issued on 25th March 2015 which stated that neighbourhood plans should not set “any additional local technical standards or requirements related to the construction, internal layout or performance of new dwellings”. I felt that much of the policy was pushing beyond

what could be achieved by a neighbourhood plan policy that had regard to this Secretary of State advice.

90. In terms of the specifics of the policy, the first clause refers to developments being “zero carbon ready”. I asked the Parish Council in my Initial Comment’s document what it meant by “zero carbon ready by design”. The Parish Council did not respond to the question in its response. However, I do accept that issues of design and layout can be used to minimise the amount of energy needed to heat and cool buildings. That is complimentary to what is set out in paragraph 162b) of the NPPF. The second element of the policy is not capable of being used by decisionmaker to determine a planning application. I will suggest that this suggestion should be moved to the supporting text.

91. The Parish Council in its response, contended that the 2015 Written Ministerial Statement had effectively been superseded. However, the matter was usefully clarified during the course of the examination. On 13th December 2023 a new ministerial statement was issued to replace the 2015 version. It stated:

“Any planning policy that propose local energy efficiency standards for buildings that go beyond current or planned building regulations should be rejected at examination if they do not have a well-reasoned and robust costed rationale that ensures:

- that the development remains viable and the impact on housing supply and affordability is considered in accordance with the National Planning Policy Framework*
- The additional requirement is expressed as a percentage uplift with a dwelling’s Target Emission Rate (TER) calculated using a specified version of the Standard Assessment Procedure (SAP)”*

92. I conclude that seeking Passihaus or an equivalent standard with a space heating demand of less than 15 kWh/m² /year is contrary to that latest policy from the Secretary of State, but I have no concerns with the policy looking to minimise energy consumption by supporting the type of development suggested, albeit with the appropriate caveats regarding the impact on character.

93. Furthermore, I believe the policy is proposing to impose excessive requirements on applicants, bearing in mind the approach being advocated by the Secretary of State. These are matters that should be covered by the Building Regulations and in particular, Part L.

94. In any event, neighbourhood planning policy is intended to direct how a planning application should be determined rather than setting out

what documents are required to be submitted with the planning application. That is the matter that can only be directed by the local planning authority, across the district, through its requirements which are set out in the Local Validation Checklist as required by the Town and Country Planning (Development Management Procedures) Order 2015. I have been advised that Tendring District Council has recently adopted a local list and so the only documents that can be required to be submitted with the planning application are those set out in that list.

95. In line with other policies, I do not consider that it is appropriate for this policy to be applied to the proposed garden community as it could lead to different requirements being imposed on different areas of the proposed new community. That is a matter that should be left to the DPD to determine.

96. These changes will require significant changes to the supporting text.

Recommendations

In A), after “All development” insert “outside of the Tendring/Colchester Borders Garden Community” and delete “be ‘zero carbon ready’ by design”.

Move the final sentence in A) to the supporting text.

Delete the first sentence of B) and in the second sentence replace “meet this standard” with “minimise energy consumption.”

Delete Clauses C, D and E

Policy ELM 9: Design Codes

97. I would particularly commend the Elmstead Design Guidance and Code report and I have no comments to make on the policy.

Policy ELM10: Important Views

98. I am satisfied that the Steering Group has approached the task of identifying important views, in a coherent and objective manner which draws upon the views which were identified by residents. However whilst I note the comments in the supporting text, I do not believe that it is appropriate for the neighbourhood plan to be identifying important views that could impact on the masterplanning of the Garden Community as these are matters that should be planned on a comprehensive not piecemeal basis and should not be constrained by the neighbourhood plan. I will therefore be proposing the removal of views 19-23 from Plan I and the Policies Map.

Recommendation

Remove Views 19,20,21,22 and 23 from Plan I and the Policies Map.

Policy ELM 11: The Village Core

99. The plan seeks to define both the Village Core and the Village Centre.
100. The Village Centre is a positive tool which reflects the reality of recent changes to Elmstead Market, especially to the south of the village with its new open space and the site of the proposed new community centre.
101. The Village Core reflects the concentration of existing commercial, business and service users in the village and seeks to expand its role to allow the introduction of new uses, such as health and well-being services and a public house/drinking establishment. Such uses can only add to the vitality of the village centre.
102. The policy also provides guidelines for “development proposals”, each one may be relevant to any *new building* proposal, but they would not, necessarily be applicable, if the proposed development involves a change of use or the conversion of existing buildings. I will propose a modification to make it clear that the policy’s expectations will only apply to the construction of *new buildings* and caveat the individual elements to only apply “where it is appropriate”.
103. In terms of the specific requirements, whilst a proposal may be required to have a positive relationship with existing open space, I will make it clear that proposals for uses, other than community uses, the development should not result in the loss of existing open space.
104. There is also a typographical error in Clause C in that it duplicates criterion (i) in criterion (ii).
105. Finally, in terms of the policy requirements relating to changes of use within the village centre, some conversions may be capable of being implemented without a need for specific planning permission. I will therefore recommend that the presumption against the loss of active ground floor use frontages only applies when explicit planning permission is required.

Recommendations

In C, replace “Development proposals” with “Where it is appropriate, the construction of new buildings”.

At the end of C i) add ‘ and does not result in the loss of existing open space unless it is for local community use’

Delete C ii) and renumber

At the start of E), insert “where planning permission is required,”

Policy ELM 12: Movement and Connectivity

106. I have no comments to make on this policy although some proposed highway improvements may fall to the Highway Authority to approve and implement.

Policy ELM 13: Managing Traffic

107. The supporting text acknowledges that the public realm improvements and traffic mitigation measures will fall to the Highway Authority, as they require approval under the highway legislation, rather than under planning powers. However, I do accept that, as part of a package of measures which may be required to address the transport implications of new development, a neighbourhood plan can reasonably identify priorities for enhancements, but only where it can only require such provision where it is necessary to make the scheme acceptable in planning terms. This is a requirement of both paragraph 57 of the NPPF and Regulation 122 of the Community Infrastructure Levy Regulations 2010.
108. I have considered the objection to this policy from Lichfields, essentially arguing that it should not apply to traffic generated by the Garden Community. My view is that if it can be shown that the required contributions meet the tests set out in Regulation 122 then such contributions would be justified. That requires the contributions to the measures at the Key Locations are directly related to the development, necessary to make the scheme acceptable in planning terms and fairly and reasonably related in scale and kind to the development.
109. In making this proviso I think the threshold of the policy, which as drafted refers to any proposal that will generate an increase in traffic on Clacton Road, could apply to any minor development such as a single house or a large extension. I am conscious of the Secretary of State's advice set out in paragraph 115 of the NPPF and will recommend the threshold should be "significant increase in traffic". That will then tie in with the Reg 122 tests.

Recommendations

***In Clause B, replace "an" with "a significant".
Add to the end of Clause B, "so long as the contributions can be shown as necessary to make the development acceptable in planning terms, is directly related to the development and is fairly and reasonably related in scale and kind to the development."***

Policy ELM 14: Local Green Spaces

110. I have no comments on the choice of the five of the sites as local green space which, I believe, all meet the criteria set out in paragraph 107 of the Framework. The one site where there is a question of its

inclusion within the Garden Community DPD area is the Allen's Reservoir. However, the boundary is drawn tight to the edge of the reservoir's bank and as such I do not consider that its inclusion would frustrate any masterplanning or other requirements stemming from the DPD. As such, whilst I have considered Lichfield's comments, I do not feel that it is necessary to remove the local green space designation for the purpose of meeting the basic conditions.

Policy ELM 15: Green Ring

111. I find this to be a locally distinctive proposal and I have no comments to make on it.

Policy ELM 16: Nature Recovery

112. In considering this policy I have a particular regard to the Regulation 16 concerns raised on behalf of Mr A Marrink by Brooks Leney, who whilst supporting the general principle of the policy, are concerned that the actual designation of what is shown as "an area of potential for additional riparian/floodplain woodland" could have possible implications for how the land is managed, for agricultural purposes. Having considered the requirements of the policy, it only relates to *development proposals* which impacted on the network. I cannot see how the policy would have any implications relating to its agricultural use or practises or indeed planting, as these do not fall within the definition of development.

113. I do not feel it is necessary for me to adjust the proposed boundary along of the Tenpenny Brook corridor, especially as the reach of the policy covers both land within the corridor and land adjoining, so the policy to have regard to maintaining and improving the functionality of the network, equally applies, whether it is within the boundary or adjoining.

114. I do not consider that the reference to "delivering a net gain" in biodiversity necessarily undermines the requirements of the development proposals to deliver at least a minimum of 10% net biodiversity gain, as required by the Environment Act in any case. I therefore do not feel the need to amend the policy.

115. As a matter of principle, I do not considerate it is appropriate for the neighbourhood plan to be identifying what would be part of the nature recovery network, in those parts of the parish which will be within the proposed Garden Community, as that is a matter for the master planning of the new community, which is effectively a strategic issue.

Recommendations

In Clause B after "Development proposals" insert "which fall outside of the Tendring/Colchester Borders Garden Community"

In Clause C after “proposals’ Insert “outside of the Tendring/Colchester Borders Garden Community”

Policy ELM 17: Health and Well-Being Service Provision

116. I have no concerns with the principle of supporting the refurbishment, reconfiguration, extension or relocation of the surgery facilities for local residents.
117. I also accept the presumption that new development should fund the delivery of health and well-being facilities where that new infrastructure is necessary to serve the development. I will however wish to see that the need for such financial contributions should be triggered by a request from the local NHS Commissioning Group, as I understand has taken place elsewhere in the Tendring District Council area, as that should be the trigger for the Section 106 payment, as I understand the District Council does not have a CIL scheme in place. Beyond that the policy meets basic conditions.

Recommendation

At the end of Clause B insert, “and when that financial or other provision is requested by the North East Essex Clinical Commissioning Group or equivalent body”.

Policy ELM 18: Local Community Uses

118. As the policy identifies the five community facilities to be protected, it is unnecessary for the policy to refer to those being outside the proposed Garden Community, and I will therefore propose a minor rewording.
119. Beyond that I have no other comments to make on this policy.

Recommendation

In Clause A, delete “outside the Tendring/Colchester Borders Garden Community”.

The Referendum Area

120. If I am to recommend that the Plan progresses to its referendum stage, I am required to confirm whether the referendum should cover a larger area than the area covered by the Neighbourhood Plan. In this instance, I can confirm that the area of the Elmstead Parish Neighbourhood Plan as designated by Tendring District Council on 23rd July 2023 is the appropriate area for the referendum to be held and the area for the referendum does not need to be extended.

Summary

121. I congratulate Elmstead Parish Council on reaching a successful outcome to the examination of its neighbourhood plan.
122. A lot of hard work has gone into this plan by volunteers on behalf of the local community over the last few years and I am pleased to recognise their sterling work.
123. This is a locally distinctive plan which deals with the issues that are important to the community, whilst recognising that the new garden community which is to be partially developed within the parish, needs to be masterplanned comprehensively, recognising its role as a strategic site.
124. To conclude, I can confirm that my overall conclusions are that the Plan, if amended in line with my recommendations, meets all the statutory requirements including the basic conditions test, and that it is appropriate, if successful at referendum, that the Plan be made.
125. **I am therefore delighted to recommend to Tendring District Council, that the Elmstead Neighbourhood Plan, as modified by my recommendations, should proceed, in due course, to referendum.**

JOHN SLATER BA(Hons), DMS, MRTPI, FRGS
John Slater Planning Ltd
3rd May 2024