

Elmstead Neighbourhood Plan 2013 - 2033 and Neighbourhood Development Order

Initial Comments of the Independent Examiner

Prepared by

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27th November 2023

Introductory Remarks

1. As you will be aware, I have been appointed to carry out the examination of the Elmstead Neighbourhood Plan and the accompanying Neighbourhood Development Order. I have carried out my initial review of both the Plan and the Order and the accompanying documents. I visited the Parish area on Thursday 23rd November 2023. I made a point of arriving early so that I could witness the traffic conditions at the Budgens crossroads during the morning peak. I was able to see the impact of the school traffic. In total I spent two and a half hours in the parish.
2. I have not yet concluded whether I will be able to deal with the examination solely based on the written material or whether it will be necessary for me to call for a public hearing. In many ways this will be dependent upon the responses I receive to the questions that I have to raise. Most of the points seek comments and clarifications based on what I have read in the plan or saw on my site visit and this is quite common in the examination process, but some matters arise based on comments made in submitted representations. Most of the questions will require a response from the Parish Council, except where I specifically refer to the District Council although I would not object if the other party were to also provide a view on those matters raised.
3. Once I receive the responses to these matters, I will let all parties know whether a public hearing will be required. If one is required, I will at that stage set out the matters that I would wish to hear further submission but at this moment it is too early to make that decision.

Regulation 16 and Regulation 23 Comments

4. I would firstly like to offer the Parish Council an opportunity to comment on the representations that were submitted to the plan as part of the Regulation 16 consultation and also the comments made in respect of the Order as a result of the Regulation 23 consultation.
5. I am not expecting a response in respect of every single point raised or indeed every representation, just those comments that the Parish Council feels it wishes to respond to.
6. Did Tendring District Council have any comments on the proposed neighbourhood plan – I could not see any Regulation 16 comments?

Strategic Policies

7. Could the District Council set out which of its local plan policies it considers are strategic policies for the purpose of general conformity, in relation to the basic conditions.
8. I note that the Tendring Colchester Borders Garden Community DPD has been submitted to the Secretary of State. Is there a timeframe set for the examination and is there an estimate of the date for its likely

adoption? I have in mind the fact that if there is a conflict between the two plans, the conflict must be resolved in favour of the policy contained in the last document to be adopted. (Section 38(5) Planning and Compulsory Purchase Act 2004)

Neighbourhood Plan Policies

Policy ELM 1: Settlement Development Boundaries

9. I would be particularly interested in the Parish Council's responses to the arguments made by Lawson Planning Partnership Ltd on behalf of Mr Clarkson regarding the land adjacent to Autofarm Car Sales on Clacton Road and in particular whether the appearance of that part of the site excluded from the settlement boundary, differs in terms of its appearance or character from the land to the east, which is proposed to be included within the settlement boundary. Would its redevelopment contribute to urban sprawl, bearing in mind the presence of large agricultural buildings on the site? Does the excluded site have the character and openness of the countryside.
10. Equally I would invite a Parish Council response to the comments submitted by Phase 2 Planning and Development on behalf of the Hills Group that including the barn would be a more defensible settlement boundary.

Policy ELM 2: Protecting the Setting of Elmstead Market

11. Is it the view of the Parish Council that outdoor sports and recreational facilities, such as sports pitches, golf courses as well as allotments and cemeteries and burial grounds, are uses that are unsuitable in the countryside. I have seen they are proposed as acceptable uses of the strategic gap as set out in Part E of Policy GC1 of the proposed DPD.
12. If they are considered suitable uses for the countryside, I would invite further justification as to why these types of uses would undermine the objective of maintaining a clear visual and physical break between the two settlements.
13. If the land was in the Green Belt, these would be classed as suitable uses, which maintain openness

Policy ELM 3: Gaps Between Settlements

14. In view of the policy's objective, implied by the policy title itself, and specifically the policy's intention to avoid the visual coalescence of Elmstead Market with Great Bromley and Frating Hill, does not the distance to these adjacent settlements, mean that the proposed Corridors of Significance will in effect, play no role in maintaining a sense of separation, especially bearing in mind the combination of other policies

such as settlement boundaries and countryside protection policies. It is a different scenario, to where the gap extends between two built up edges of settlements, as in the case of the Local Gap to the south of Elmstead Market.

Policy ELM 5: Affordable Housing

15. Can the District Council provide confirmation that Elmstead parish is designated as a rural area under Section 157 the Housing Act 1985. Why did the District Council not incorporate a lower threshold for the rural areas in its Local Plan Policy LP5?

Policy ELM 7: Housing Mix

16. Do the Parish Council have a view on whether that the policy should be strengthened, to “require” a majority of 1 and 2 bed units, rather than “seek to include”?

Policy ELM 8: Zero Carbon Buildings

17. The Secretary of State in a Written Statement to the House of Commons dated 25th March 2015 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 “. The expectations that any requirement above the Building Regulations (Part L) should only be included by a policy in a Local Plan.
18. What does the Parish Council mean by “zero carbon by design”?
19. Does the District Council have a view of the enforceability of the measures set out in criteria C and D. Also is the requirement to submit an Energy and Climate Statement set out in its Local Validation Checklist as to documents which are required to be submitted with a planning application within Tendring district.

Policy ELM 10: Important Views

20. Can the Parish Council set out what criteria it used to select what are proposed as Important Views.

Policy ELM 11: The Village Core

21. It appears that the requirements of Criteria C - I. and II are identical. Is that a typo?

Policy ELM13: Managing Traffic

22. Is there any agreed schemes for the traffic management measures for the schemes shown in Plans L and M, and have they been agreed by the Highway Authority. Has the principle of a raised carriageway as suggested in Plan L, on what is a A- class road, been agreed. Is it appropriate for applicants to be required to contribute to these public realm improvements and traffic mitigation measures when the feasibility

of such measures, is still being explored? Does the District Council have a view as to whether these contributions would meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2020?

Policy ELM 14: Local Green Spaces

23. Can the Parish Council explain how it chose the sites proposed for designation as LGS. I was surprised, on my site visit, that other open spaces were not included, such as the land near the primary school at Elmcroft and some incidental open spaces provided in the new developments, which seemed to offer the same level of amenity, as some of the similar spaces identified e.g. sites 2 and 3.

Policy ELM 16: Nature Recovery

24. Does the District Council have a view as to whether the policy will be capable of working alongside the Net Biodiversity Gains legal requirements, which will be introduced nationally in the New Year?

Policy ELM 17: Health and Wellbeing Service Provision

25. Can the District Council advise whether it has adopted a CIL Scheme which can contribute towards health infrastructure improvements.

26. Can the Parish Council expand on how it would see the developer contribution “to improve the delivery of essential health and wellbeing facilities or services”, working. Is it expected that it would be a per unit financial payment to provide funding for a new health centre? Can the District Council advise how improvements to health facilities caused by residential development in areas where GP services are operating at capacity, are funded elsewhere in Tendring district?

Neighbourhood Development Order

Background to the Development

27. Can the Parish Council explain why it decided to use the Neighbourhood Development Order provisions of the legislation rather than a Community Right to Build Order?

28. Can the Parish Council set out the current situation regarding the delivery of the new community centre. Is it fully funded, is it to be delivered by the developer as part of the wider Charity Fields development, does it have detailed planning permission? Is the new building dependent upon the receipt of a capital sum from the development of the existing community centre site? Has a contract for the building of the new community centre been let?

29. I note that the District Council is expressing concerns regarding the ability of the site to accommodate 9 units. The description is for *up to 9 units* but

would a restriction to a smaller number of flats be able to fund the delivery of the replacement community centre?

30. Can the Parish Council explain how the red line for the Order has been chosen, as it does not appear to cover the whole area which is required for the development i.e. some of the development's parking appears to be on land outside the red line. Does the Parish Council own the land up to the boundary with the school, including access to the public open space to the east. Is there an impediment for the redline site to be extended up to the Market Field School boundary. Is the parking area used by users of the adjacent playing fields?
31. Does the District Council have minimum standards on the amount of communal amenity space that will be required for a development of 9 one and two bed flats?

Planning Conditions and Planning Obligation

32. Can the District Council comment on what appears to be an apparently contrary position with regard to the Habitat Regs. The neighbourhood plan, included Policy ELM 4 setting out proposals for the affordable housing scheme on this site, was determined that it would not have a significant adverse effect on the European protected sites, through its Habitat Regs Screening Direction. However, in relation to the Order, which promotes that same affordable housing scheme, the District Council concludes that any residential development must provide mitigation, as it could, in combination with other developments, have a significant adverse effect on the European protected site. It appears that the council is taking a contradictory position on the same development.
33. I would welcome any comments that the Parish Council wish to make in response to the additional conditions being sought by the District Council, as well as a chance to respond to the comments that have been made, on the Parish Council's own proposed conditions, to be inserted in the Order.
34. I am now satisfied that legal authority exists for the making of a planning obligation in respect of a development consent order. If I conclude that a Section 106 agreement is required, is the Parish Council prepared to enter into such an obligation, if I consider it meets the tests of Regulation 122 of the Community Infrastructure Levy Regulations 2010?
35. Can the District Council set out what level of contributions will be expected, both in respect of the open space as well as the European protected site mitigation measures. Does the District Council have a standard template for a planning obligation that could be adapted for the purpose of an NDO, in lieu of a planning application? Does it have a view as to whether that obligation must be completed before I can make my recommendations or should I recommend that the Order can only be

made, if the planning obligation is entered into before that Order is made (or indeed referred to referendum)? Does it have a view whether a planning condition could be attached to the Order which states that the development could not be commenced until that obligation had been entered into?

36. Can the Parish Council offer an exclamation as to why its proposed condition requires the 20% renewable energy requirement is different to the approach set out in the in its accompanying neighbourhood plan through Policy ELM 8- Zero Carbon Building?

Concluding Remarks

37. Whilst I have raised a lot of questions, I remain open minded as we go forward with the examination and I look forward to the responses.
38. I am sending this note direct to both Elmstead Parish Council, and Tendring District Council. I would request that both parties' responses to my questions should be sent to me by 5 pm on **15th December 2023** and also be copied to the other party. I have given a longer period than I would normally set at this stage, because of the range of questions that I am seeking responses to.
39. I would also request that copies of this note and the respective responses are placed on the Neighbourhood Plan's and also the District Council's website.

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