

ELMSTEAD NEIGHBOURHOOD PLAN AND DEVELOPMENT ORDER

Response to Examiner's Initial Queries

15 December 2023

Dear Mr Slater,

Thank you for inviting the Parish Council to respond to your Initial Comments of 27 November 2023. We have done so below by using the paragraph numbering in your document.

§2

We have no observation to make on your option of calling a public hearing, other than to note that it will require the Parish Council to incur an additional expense to retain its professional advisors for that purpose.

§4-§8

We have reviewed the comments and consider that you have identified all those matters that we would wish to respond to, with no further comments to make. We noted too that Tendring DC (TDC) did not make any Reg 16 comments on our Neighbourhood Plan (ENP) but has on our Neighbourhood Development Order (ENDO). This inconsistent approach to the project has unfortunately been characteristic for much of its duration and has led to some misunderstandings in its ENDO comments, which we address later.

Needless to say, had we benefited from more helpful, responsive and timely engagement, most of the issues you have raised could have been dealt with in our submission documents. This could have been especially helpful in respect of making clear the relationship between the ENP and emerging Garden Community (GC) DPD.

That said, we consider we have handled the matter in a way that is mutually beneficial and soundly based on the strategic policy context and evidence base. Our submitted ENP contains fewer policies that cover the DPD area than the earlier drafts, which shows that the Parish Council has been willing to listen and respond positively to the developer's comments.

Admittedly, you could have benefited from a joint statement to this effect. As it is, we are confident that we will be able to help you make recommendations, which will enable the ENP and ENDO, with some modifications, to proceed to the same referendum.

§9-§10

We consider we have adopted a simple and consistent approach to **Policy ELM1**, based on the principles and conventions for defining settlement boundaries in development plans. As noted in the supporting text, we have excluded land in agricultural use that has no direct functional relationship to the primary residential use of the new settlement at Lanswood. In addition, in respect of the comments made by Hills regarding the land it describes as 'the southern side of Lanswood' (see Figs 1 and 2 on its pp3-4), we have also been very mindful of the September 2023 [decision to dismiss an appeal](#) on the refusal of planning permission to redevelop the barn.

We have not made housing site allocations, for the reasons explained in the submitted documents, and did not want to incorporate ‘white’ land within the settlement boundary that may then come forward for residential proposals. With other such potential candidates for boundary modification in the Parish, this would have entailed a proper site assessment process, which we have not been obliged to carry out this time around. A future ENP may review this matter if encouraged by strategic policy to bring forward site allocation proposals.

§11-§13

Policy ELM2 combines two separate but closely related policy objectives: spatial openness (per your comparison with how Green Belt policy operates) and landscape character. In doing so, it is intended to manage not just the spatial openness of the village setting but also its future use in respect of maintaining its essential countryside landscape character.

Clause B(i) of ELM2 operates in conjunction with clause ELM1(C) to manage both development location and design, and land use. The goal is to avoid urbanising features in the setting, thereby supporting uses that would have no urbanising effect, e.g. an allotment or cemetery but not those that are associated with urban areas like sports and recreational facilities, with buildings, fencing and floodlights. Although not urban per se, the inevitable industrial appearance of solar farms would result in a harmful urbanised effect in this setting and this would also be contrary to the policy.

The landscape report explains why this land is so sensitive to the creep of the GC further into the Parish. The Parish Council objects to the DPD in this regard and will be using its NP and evidence base in its case in the examination of the DPD in due course.

That all said, we accept that further clarity may be desirable, and you may therefore wish to consider recommending the following modification (together with a modification to §5.14):

B. Proposals for development within the Green Landscape Buffer will only be supported where they:

iv. protect and reinforce the identified positive features of the landscape in the Green Landscape Buffer but where the use or development of land will comprise no urbanising effects by way of the location and scale of buildings and structures.

§14

We were inspired by the made [Ivers Neighbourhood Plan](#), which contains a policy with the same intent as **Policy ELM3** and wording in respect of defining Corridors of Significance. This provision is less about creating a strategic gap with our neighbours at Great Bromley and Frating, but with those established clusters of buildings (at Mill Farm Campsite and Frating Hill) on their peripheries that are much closer to the eastern edge of the village. Further linear development along those two main roads may have a harmful ‘ribbon development’ effect of connecting them to the village on land that lies within our Neighbourhood Area. We therefore consider this a reasonable policy objective that has been well evidenced.

§16

This is a drafting error in **Policy ELM7** and you may therefore wish to consider recommending a modification for the policy to ‘require’ rather than ‘seek’ that housing mix provision, to bring it into line with the supporting text (§5.37).

§17-§19

For **Policy ELM8** you may know that this matter is currently the subject of a [judicial review](#) (per the Salt Cross Area Action Plan in West Oxfordshire). To our knowledge, at least four adopted Local Plans and three made Neighbourhood Plans contain policy proposals with the same intent and/or provision as that of ELM8, with their respective inspectors and examiners all concluding that the Written Ministerial Statement of 2015 has been superseded by more recent Government policy statements. None of the LPA decisions to adopt or make those plans have been challenged in the Courts.

The provision for requiring a post occupancy evaluation of buildings that cannot be certified as zero carbon (e.g. PassivHaus) at the time of construction is one that has been applied by some LPAs to commercial buildings for many years without a problem. If an LPA is serious about its ‘climate emergency’ declaration, then putting in place this simple monitoring and correction loop by way of a planning condition to be discharged (in effect no different to checking that a landscape scheme has been properly implemented) should be manageable.

If you are minded to recommend the modification or deletion of the policy we would expect you to set out the legal basis on which you consider the WMS remains valid, despite all the evidence to the contrary.

§20

On **Policy ELM10**, our first ENP survey in 2021 received over 200 responses. Question 4C asked “Are there any landscape views in the Parish you particularly enjoy? Please tell us which”. The answers were assessed and discussed by the steering committee, which dismissed some as being unworkable (too ambiguous or broad) and also discarding a number of suggestions for reasons such as being publicly inaccessible or predominantly of areas outside the Parish.

A short list was created of viable views. These locations were visited, documented and mapped with the perspectives photographed. We were advised that we should select only those views of landscape or other features (i.e. objects) looking into or out of the village, or across different parts of the Parish landscape, that we could show are very special to a majority of the local community. The object must be clearly seen from a public vantage point in either a glimpse, corridor or vista-type view.

Our analysis was then used to create a presentation given at the ENP focus group in October 2021. Members of the public were asked to rank the views in order of importance to establish the community value. The steering committee then reviewed the results and removed the lowest ranking views. The important views map was also a focus of much attention at the exhibition events in 2022, where members of the public were supportive of the decisions made.

§21

This is a drafting error in **Policy ELM11** and you may therefore wish to consider recommending a modification to correct it.

§22

Policy ELM13 is intended to draw attention to the Key Locations we have defined on the Policy Map Inset. The text provides the rationale for bring this attention to an issue that has resulted from the approval and delivery of so much unplanned, incremental (but large scale) housing development in the village over a short period of time.

It also explains that the schemes in plans L and M are indicative ideas for how improvements may be made but are not firm proposals, let alone those agreed with the highways authority (though it welcomed the approach taken in the policy). The Parish Council expects that the ideas will inform those of future applicants of schemes in the Parish, including the GC, which has identified the need to invest in highways mitigation measures beyond its immediate boundary.

§23

The proposed LGSs in **Policy ELM14** have been derived from a balancing of the technical evidence with that of community and other stakeholder support to result in a small number of the most important candidates. Those spaces not identified in the policy are either considered to have sufficient existing protection or to fall below the high threshold set by NPPF §102.

§24

In relation to **Policy ELM16**, the Parish Council has been made aware by its advisors that this type of green infrastructure policy is well suited to accommodating the national provisions for local nature recovery and biodiversity net gain.

§26

The Parish Council is aware from TDC's [Infrastructure Funding Statements](#) on the collection and spending of S106 financial contributions (in the absence of CIL) that investment in healthcare infrastructure is one such beneficiary. **Policy ELM17** establishes the principle of applicants assessing the impact of future schemes on the demand for local healthcare services and making financial contributions via S106 in the normal way.

§27-§31

Both a Community Right to Build Order and a Neighbourhood Development Order (NDO) are fit for this purpose, but there is no material difference between them for proposals of this type. As the funding source that enabled the Parish Council to pursue this approach only referred to NDOs, this pragmatic route was taken.

We consider that TDC has misunderstood the relationship between the ENP and ENDO and the timing of their making in due course. We have made it clear in **Policy ELM4** that the benefit of planning permission will only be obtained once the new community centre (NCC) is operational and the ENDO includes a condition (3.2.1) to that effect.

We have also made it clear to TDC and in the documentation that the Parish Council requires no financial contribution to that new facility. The ENDO scheme has been driven by our desire to replace what will become an obsolete building and land with a direct community benefit in the form of affordable housing.

We can report that the NCC project is progressing well. We expect an initial funding contribution via S106 from the Pavilion View development on Church Road shortly. This triggers the Charity Field developer's contribution within 100 days. Combined with some smaller contributions already received, this totals over £1 million in dedicated funding. We understand this will be enough to build the NCC, as further S106 contributions already received by TDC are being retained to fund the surrounding outdoor space attached to the NCC.

Unfortunately, because of the pandemic's influence on the housing market, the [initial planning permission for the NCC](#) (14/01728/OUT) obtained by the Charity Field developer expired in August 2023. However, we will submit soon a reserved matters application under the wider outline Charity Field development planning permission and we are currently working to tender the design of the project to architects.

As such the project is not dependent upon any capital sum from the existing community centre site, and the PC is determined to operate that centre until the NCC is fully operational (hence the commitment made with this intent in the ENDO). Once planning permission is obtained for the NCC we will contract a builder that may or may not be the developer of the wider Charity Field site. We have no reason to believe the new application will be refused, as the proposition remains the same.

To be clear then, any potential capital sum from developing the existing community centre site has not yet been allocated by the Parish Council to a specific purpose, but is not required for the NCC.

We consider that TDC has also misunderstood the approach we have taken in the ENDO. We have tried to explain in discussions with them (and captured in the document) that the preliminary engagement with our preferred local housing association partner (CHP) has resulted in us wanting to provide flexibility in the final unit type mix. The ENDO design work shows that a scheme of nine units is feasible, but identifies that some unit type mixes may require the partner to negotiate access to the land immediately beyond our ownership boundary shown by the red line on the plans.

That land is owned by TDC and forms part of the current public car park that serves the recreation ground and has served the community centre to date. There are other places in the village for visitors to the recreation ground to park their cars, so we do not regard using that land to support the affordable housing scheme as an inevitable conflict with this other purpose.

If it is not possible to come to an agreement on that matter then the ENDO consent provides for either a lower number of units and/or an alternative unit type mix to be proposed at the 'reserved matters' stage. We consider this an entirely reasonable and sensible approach to take.

§32-§36

You will have noted that the [submitted SEA/HRA screening opinion](#) of the ENP approved by TDC after consultation with the statutory bodies explicitly acknowledges the redevelopment scheme (see Table 4 on p34 of the report).

In that same table, the screening concludes:

“As the Elmstead Neighbourhood Plan allocates the former community centre for re-development as a small housing scheme, it will be supported by the adopted Local Plan Section 1 Plan Policy SP2

Recreational disturbance Avoidance and Mitigation Strategy (RAMS) and the Essex Coast RAMS SPD.

The adopted Local Plan Section 1 Plan Policy SP8 Development & Delivery of a New Garden Community in North Essex states that a DPD will be prepared and part x requires significant networks for new green infrastructure including a new country park. Should any large residential development come forward in Elmstead, this provision is considered sufficient to comply with Natural England's advice to avoid predicted recreational impacts from residential development when considered alone.

*It is therefore considered that this impact pathway should be **screened out** for further assessment as without mitigation, Likely Significant Effects from the Neighbourhood Plan resulting from recreational impacts on Habitats sites can be ruled out."*

The Parish Council agreed with this opinion as a sensible approach to take in this circumstance.

As TDC has chosen to process the ENDO in the same way that it would a planning application, its proforma process for handling HRA, appears to have failed to acknowledge that the proposal has already been screened out. We were only made aware of its decision to produce the proforma by its inclusion in TDC's Regulation 16 comments on the ENDO.

However, if TDC considers that, irrespective of the screening outcome on the ENP, the ENDO must comply with the Habitat Regulations, then the Parish Council considers that the ENDO scheme will be able to pay the £157/dwelling mitigation payment. In which case, we would agree to you recommending a suitable modification to the ENDO to make that provision. But we would strongly object to TDC seeking to revisit its HRA screening opinion of the ENP, having had you now draw this matter to its attention, and we would very much hope that you do not make any such a recommendation.

More generally, we would agree to the ENDO being modified to take account of TDC's suggested deletions, modifications and additions to the conditions and of the need for the S106 to address other matters to remain policy compliant. Although there are few made Orders elsewhere in the country to learn from, we would consider it appropriate for a condition to be attached requiring the completion and signing of a S106 agreement prior to the commencement of the development, perhaps with the S106 scope being agreed in the final version of the ENDO or addressed as a 'reserved matter'.

In respect of 'reserved matters', we have been hesitant to use that term in the ENDO, as the statutory scheme and guidance make no reference to it in relation to Orders. We are aware that other Orders have used terminology akin to that used in some Local Development Orders. However, despite the fact that it appears to have added to TDC's confusion in some regards, the Parish Council accepted earlier in the process that TDC considering the ENDO as it were a planning application by another name might help it engage positively with the project, hence the term has been used here. We do not consider that the ENDO cannot introduce and use that term to describe those matters that will be necessary for the LPA to determine once the ENDO – with its equivalence to an outline planning application – is made.

Regards,

Elmstead Parish Council