

# Local Plan Committee Meeting

**Online Meeting, Virtual Meeting Platform  
Tuesday, 14 July 2020 at 18:00**

**The Local Plan Committee** deals with the Council's responsibilities relating to the Local Plan

## Information for Members of the Public

### Access to information and meetings

You have the right to observe all meetings of the Council, its Committees and Cabinet including those which may be conducted online such as by live audio or video broadcast / webcast. You also have the right to see the agenda (the list of items to be discussed at a meeting), which is published on the Council's website at least five working days before the meeting, and minutes once they are published. Dates of the meetings are available here:

<https://colchester.cmis.uk.com/colchester/MeetingCalendar.aspx>.

Occasionally certain issues, for instance, commercially sensitive information or details concerning an individual have to be considered in private. When this is the case an announcement will be made, the live broadcast will end and the meeting will be moved to consider in private.

### Have Your Say!

The Council welcomes contributions in the form of written representations from members of the public at most public meetings. One single contribution to each meeting of no longer than 500 words may be made by each person which must be submitted online by noon on the working day before the meeting date. Please use the form [here](#).

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**COLCHESTER BOROUGH COUNCIL**  
**Local Plan Committee**  
**Tuesday, 14 July 2020 at 18:00**

**The Local Plan Committee Members are:**

Councillor Nick Barlow  
Councillor Lee Scordis  
Councillor Lewis Barber  
Councillor Tina Bourne  
Councillor Phil Coleman  
Councillor Andrew Ellis  
Councillor Chris Hayter  
Councillor Patricia Moore  
Councillor Beverley Oxford

**The Local Plan Committee Substitute Members are:**

Other than the Local Plan Committee members, all members of the Council who are not members of the Planning Committee.

**AGENDA**  
**THE LIST OF ITEMS TO BE DISCUSSED AT THE MEETING**  
**(Part A - open to the public)**

**Members of the public may wish to note that Agenda items 1 to 5 are normally brief.**

**Live Broadcast**

Please follow this link to watch the meeting live on YouTube:

<https://www.youtube.com/user/ColchesterCBC>

**1 Appointment of Chairman**

To appoint a Chairman for the forthcoming Municipal Year

**2 Appointment of Deputy Chairman**

To appoint a Deputy Chairman for the forthcoming Municipal Year

**3 Welcome and Announcements (Virtual Meetings)**

The Chairman will welcome members of the public and Councillors to the meeting and remind those participating to mute their microphones when not talking. The Chairman will invite all Councillors and Officers participating in the meeting to introduce themselves. The Chairman will, at regular intervals, ask Councillors to indicate if they wish to speak or ask a question and Councillors will be invited to speak in turn by the Chairman. A vote on each item

of business will be taken by roll call of each Councillor and the outcome of each vote will be confirmed by the Democratic Services Officer.

**4 Substitutions**

Councillors will be asked to say if they are attending on behalf of a Committee member who is absent.

**5 Urgent Items**

The Chairman will announce if there is any item not on the published agenda which will be considered because it is urgent and will explain the reason for the urgency.

**6 Declarations of Interest**

Councillors will be asked to say if there are any items on the agenda about which they have a disclosable pecuniary interest which would prevent them from participating in any discussion of the item or participating in any vote upon the item, or any other pecuniary interest or non-pecuniary interest.

**7 Minutes of Previous Meeting**

The Councillors will be invited to confirm that the minutes of the meeting held on 27 February 2020 are a correct record.

**Local Plan Committee Minutes 27 February 2020**

7 - 16

**8 Have Your Say! (Virtual Local Plan Meetings)**

At meetings of the Local Plan Committee, members of the public may make representations to the Committee members. Each representation, which can be a statement or a series of questions, must be no longer than three minutes when spoken (500 words maximum). One single submission only per person and a total limit of 30 minutes (10 speakers) per meeting. Members of the public may register their wish to address the Committee members by registering online by 12 noon on the working day before the meeting date. In addition, a written copy of the representation will need to be supplied for use in the event of unforeseen technical difficulties preventing participation at the meeting itself. The Chairman will invite all members of the public to make their representations at the start of the meeting.

These speaking arrangements do not apply to councillors who are not members of the Committee who may make representations of no longer than five minutes each.

**9 Local Plan: Inspector's Conclusions and Implications**

17 - 134

The Committee will consider a report on the implications of the Planning Inspector's conclusions.

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|----|--|--------------|
| 10 | <b>Tendring Colchester Borders Garden Community</b><br>The Committee will consider a report on the proposals for the preparation of a Development Plan Document for the Tendring Colchester Borders Garden Community.  | 135 -<br>140 |
| 11 | <b>Statement of Community Involvement - Coronavirus Update</b><br>The Committee will consider a report on the need to revise planning related public access and involvement procedures contained in the Council's Statement of Community Involvement (SCI) in the light of Government guidance on coronavirus implications.  | 141 -<br>150 |
| 12 | <b>Exclusion of the Public (not Scrutiny or Executive)</b><br>In accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public, including the press, from the meeting so that any items containing exempt information (for example confidential personal, financial or legal advice), in Part B of this agenda (printed on yellow paper) can be decided. (Exempt information is defined in Section 100I and Schedule 12A of the Local Government Act 1972). |              |

**Part B**  
**(not open to the public including the press)**



# Local Plan Committee

## Thursday, 27 February 2020

**Attendees:** Councillor Tina Bourne, Councillor Andrew Ellis, Councillor Patricia Moore, Councillor Lee Scordis

**Substitutes:** Councillor Paul Dundas (for Councillor Lewis Barber), Councillor Sam McCarthy (for Councillor Nick Barlow), Councillor Martin Goss (for Councillor Phil Coleman), Councillor Dennis Willetts (for Councillor Chris Hayter), Councillor Gerard Oxford (for Councillor Beverley Oxford)

**Also Present:**

### 188 Have Your Say!

David Cooper, on behalf of Stop350, addressed the Committee pursuant to the provisions of Meetings General Procedure Rule 5(3). He sought clarification on the status of the emerging Local Plan, his understanding being that only Section 1 of which was the subject of an examination by the Planning Inspector. However, he referred to a reference to the need for Section 2 of the Plan to be reviewed due to the period of time which had elapsed since the Plan's submission for examination. He also referred to legal advice submitted to a recent meeting of the Planning Committee indicating that both Sections of the Plan were the subject of examination and, as such, weight could be given to both Sections 1 and 2 when considering the planning applications at Brierley Paddocks, West Mersea. He considered this site, which had been allocated in Section 2 of the Plan, was still the subject of outstanding objections whilst he was also aware that an application had been submitted in respect of the second allocated site on West Mersea, which was also the subject of outstanding objections. He asked how the objections to sites in Section 2 of the emerging Local Plan could be considered.

Ian Vipond, Executive Director, confirmed that both Section 1 and 2, which together made up the emerging Local Plan, had been submitted for examination and, as such, both Sections also carried weight. He also confirmed that the examination of Section 2 of the Plan had not yet commenced.

Sir Bob Russell addressed the Committee pursuant to the provisions of Meetings General Procedure Rule 5(3). He referred to matter which he raised at the previous meeting of the Committee, the Ministry of Defence (MoD) land at Middlewick, which had been placed on the market for sale by the MoD. He welcomed the reduction in the number of houses allocated for the site from 2,000 to 1,000, acknowledged that it was inevitable that development would take place on the site and was of the view that

agreement needed to be reached as to where on the site the development should take place. He was of the view that the housing development needed to be located south of the firing butts to enable the area between Abbots Road and the firing butts to be designated as a country park. He considered this to be of visual benefit and would avoid the urban coalescence of Old Heath, Barn hall and Monkwick.

The Chairman confirmed that the Local Plan Committee had approved the Local Plan for submission for examination, not the Council itself, he acknowledged that the future development of the site would take place in the future and confirmed that negotiations would continue with the MoD regarding the detail of the development.

William Joliffe addressed the Committee pursuant to the provisions of Meetings General Procedure Rule 5(3). He sought clarification regarding the vacation of the land at Middlewick by the MoD and whether a land sale had yet been completed. He opposed the development of the site and considered arrangements should be made for the public to state their views on the proposals. He also referred to Climate Change and Global Warming and the potential involvement of school children to help prevent the development of the site.

The Chairman confirmed that the land had not yet been sold but he gave an assurance that ward councillors would notify residents when this situation changed. Sandra Scott, Place Strategy Manager, confirmed that the last published date for disposal was 2021 and the Executive Director confirmed that Climate Change was a matter being considered in relation to any work undertaken by the Council whilst the Council's recent declaration of a Climate Emergency meant that policies would be adapted accordingly. He explained that any impact would need to be assessed as issues came forward, as such, it would be essential that the correct policies were in place to enable these assessments to adequately address the necessary issues. He also explained that the Council had a duty to deliver a defined level of housing and employment each year, against which other considerations needed to be balanced.

Nick Chilvers addressed the Committee pursuant to the provisions of Meetings General Procedure Rule 5(3). He asked about the employment opportunities for future residents of Middlewick and referred to the difficulty of travelling from the south of the town, citing problems with Mersea Road, Brook Street, Abbots Road, Old Heath Road, Whitehall Road and Haven Road and the considerable distance from the site to the A12. He considered robust road infrastructure improvements needed to be introduced, including a southern circular route to link with the A133 to avoid the Hythe and the town centre. He acknowledged that the development of the site was inevitable, but he considered the development needed to be sustainable and questioned whether traffic and transport assessments and job creation plans had been commenced and whether such evidence would need to be submitted to the Planning Inspector for consideration. He referred to unsuccessful housing developments elsewhere in the country which had been built on the outskirts of towns without adequate connectivity and he asked for greater



engagement with the community.

Sandra Scott, Place Strategy Manager confirmed that significant work had been undertaken and was continuing to justify the proposed allocation at Middlewick, including transport assessment work and this would form part of the evidence base to support the Local Plan. The policy requirement to address sustainability and mitigation issues would be made publicly available, would form part of the master planning for the area and would provide opportunities for community engagement.

The Executive Director acknowledged the comments regarding sustainable development and confirmed that the MoD would be encouraged to bring forward proposals which would accord with sustainability requirements which would then be the subject of public assessment.

#### **189 Local Plan Committee Minutes 16 December 2019**

The minutes of the meeting held on 16 December 2019 were confirmed as a correct record, subject to the comment made by Councillor Ellis in paragraph 5 of minute number 185 referring to £355 million infrastructure funding gap being amended to £335 million infrastructure funding gap.

Councillor Ellis asked whether any progress had been made regarding consultation with ward councillors and community members on proposed developments and their associated Section 106 Agreements.

The Place Strategy Manager confirmed that she wasn't in a position to confirm the current situation but would arrange for details of progress on Section 106 consultations to be provided to the Committee members outside of the meeting.

#### **190 Local Plan Update**

William Sunnocks addressed the Committee pursuant to the provisions of Meetings General Procedure Rule 5(3). He considered the meeting was important in terms of the Committee's response to the information which would be contained in the examination inspector's letter. He considered the Committee's report was a reiteration of the potential difficulties should the Garden Communities not receive approval from the Inspector. He proposed more collaborative working to collectively determine an agreed response. He cited the need to retain the existing Local Plan because of the requirement for housing numbers to be re-assessed in accordance with the provisions of the current formula and he considered officers' ingenuity and experience needed to be used to suggest ways in which the Plan could be revised without it being entirely dispensed with. He considered various options would be possible with a positive approach, such as the removal of Section 1 or the transfer of some elements of Section 1 into Section 2. He was also of

the view that it would be a mistake to continue with Section 1 of the Plan first, rather that Section 2 should be implemented as soon as possible. He considered that the control of the land for the Garden Communities needed to be secured before decisions were made on allocation and that the principle of acquisition of land by Compulsory Purchase Order was not a viable option on such a large scale.

Councillor Luxford Vaughan attended and, with the consent of the Chairman, addressed the Committee. She considered the report to be an explanation of process rather than an actual Plan B which was what had been anticipated when the Motion had been approved at the Council meeting in October 2019. She considered an appropriate Plan B would be to follow the Option 1 outlined in the Planning Inspector's letter, together with the advice of the Inspector to make amendments to Sections 1 and 2 of the emerging Local Plan. She asked whether this opportunity was still open to the Council and for clarification to be sought from the Inspector on this point. She referred to the comments of the Inspector at the examination relating to the Council's housing target and the additional capacity which had been built in to the Council's housing numbers which she had noted exactly corresponded with the total number of houses allocated in the Garden Community projects. She sought clarification regarding the basis for the additional capacity in housing numbers, bearing in mind that, in her view, the Council had over-delivered on its housing targets over the past five years by 130%. She questioned why no opportunity had been given to Councillors to determine whether it was appropriate to apply additional capacity within the housing numbers and speculated that this approach would not have been supported by Committee members. She questioned the need to undertake a review of the Sustainability Appraisal unless it was likely to be found to be unsound and she referred to the status of Adopted Neighbourhood Plans and questioned the ability of the Council to disregard the policies contained within such plans. She referred to affordable housing and considered it was not acceptable for the Supplementary Planning Document relating to the Garden Community projects to permit the delivery of fewer affordable rented dwellings than other developments in the Borough.

Councillor Fox, Portfolio Holder for Housing, attended and, with the consent of the Chairman, addressed the Committee. He referred to the need for more affordable housing in Colchester, the housing crisis in Colchester and the need to achieve the successful development of a sound Local Plan to address this problem. He considered the need for more affordable housing had cross party support from Councillors and that the delivery of a significant proportion of such housing through Section 106 contributions needed to be continued. He was of the view that this housing needed to be in the right locations, supported by community infrastructure and that the Council's Local Plan approach would ensure this was successful. He did not consider the Borough to be as vulnerable as others to 'planning by appeal' which would not deliver all the requirements of sustainable development, at the expense of affordable housing, in remote locations, distant from supporting infrastructure and not suitable to vulnerable residents needing health care, social care support and public transport. He acknowledged that market

forces would deliver homes but, in his view, this needed to be regulated through the policies contained in the Local Plan. He confirmed that the emerging Local Plan increased the percentage of affordable homes being sought from new developments to 30%, levels which has already been achieved at sites in Chitts Hill and Great Horkesley. He referred to the site at Middlewick and the aspiration of the Government to secure £5b from the sale of land but he was concerned about reports that only 2.6% of houses on such sites were in the social rented sector. He welcomed comments about the need for social infrastructure to support development in the Middlewick area and confirmed that these issues had been raised by councillors when the Local Plan was being drawn up. He acknowledged the work of the officers dealing with the complexities of the Local plan process and in setting out the current position on the emerging Local Plan for the Committee members. He considered that Colchester, Braintree, Tendring and Essex Councils had made a brave choice to adopt the Garden Community project approach which was the best opportunity to deliver infrastructure needed first. His view was that no further action should be taken in relation to a Plan B option until the response from the Inspector was received as this would involve the whole process being restarted.

Councillor J. Young, Portfolio Holder for Culture and Performance, attended and, with the consent of the Chairman, addressed the Committee. She commended the hard work of the planning officers in preparing the Local Plan. She explained that a response from the Inspector in relation to the soundness of the Local Plan would soon be received which would provide clarity needed by the Council. She was of the view that, should Section 1 of the Plan be found unsound, the work on Section 2 would become the Council's Plan B. She considered it to be in everyone's interest for the emerging Local Plan to be adopted as soon as possible to ensure that the Council's housing target could be kept as low as possible. She also advocated the Council's current approach as the best opportunity to deliver infrastructure-led development and affordable housing. She considered that likely consequences of a new Local Plan being started would be the development of land bordering the Borough, without infrastructure; other areas of the Borough needing to accept greater housing numbers and Neighbourhood Plans being undermined. She confirmed that arrangements would be made for a member briefing on the contents of the Inspector's letter so that clarity on housing numbers could be given and she commended adhering to the existing Local Plan.

The Committee considered a report by the Assistant Director Place and Client Services providing an update on the Local Plan examination and setting out possible outcomes, alternative proposals and the implications for other parts of the service.

Ian Vipond, Executive Director, made a presentation to the Committee outlining the progress of the Section 1 examination process; the three possible outcomes of the Inspector's letter; the requirements necessary for Section 2 of the Local Plan to proceed to examination; the requirements and implications of a new Plan option and envisaged timescales for the adoption of the current emerging Local Plan.

Councillor Willetts referred to the approved Motion from the Council meeting in October 2019 Officers which provided for the development of a contingency Plan B to the current proposals in Section 1 of the emerging Local Plan, for submission to the Local Plan Committee within one month of the completion of the Section 1 public hearing and asked about procedural issues associated with that Motion. Whilst he acknowledged views expressed not in support of the formation of a Plan B, he considered the views expressed by the Council was an instruction which the Committee was required to comply with. He further considered that the report presented to the Committee had not fully addressed the instruction given by the Council. He was of the view that it would not be difficult for a series of potential scenarios to be identified of what might happen and how such scenarios could be dealt with. He questioned the rationale behind the timescales identified in the report, being of the view that the production of a Plan B would take less time to complete than having to undertake a full review of the Local Plan in its entirety. He was of the view that the report demonstrated an unwillingness to embrace the concept of a Plan B, particularly given the indicative timescales associated with an alternative plan. He commented on the Council's reputation for its risk analysis work and contingency planning in relation to its business processing and he considered the Local Plan should be subject to the same rigorous risk assessment. He was strongly of the view that consideration needed to be given to the range of options available to produce a Colchester only Local Plan, not relying so heavily on the Garden Community principles.

The Chairman was of the view that the report presented to the Committee clearly demonstrated a framework for progress with the Local Plan and he cautioned against comments implying unwillingness to consider other options on the part of officers.

Councillor Willetts confirmed he had no intention to criticise officers but to express his concern that no Plan B had yet been identified.

Councillor Goss was of the view that the Local Plan framework was highly complex and resource intense and it was unrealistic to expect an alternative Plan to be formulated at short notice and the risk of moving to a new Local Plan were that it would have to comply with the provisions of the latest National Planning Policy Framework (NPPF) and its associated increase in housing numbers for Colchester from 920 to 1086 per year.

Councillor Dundas commented on the three likely wide-ranging outcomes from the Inspector's letter, as identified in the report and he acknowledged that the potential for modifications to be required could cover a multitude of scenarios. He had hoped to see identified a degree of planning and options for different scenarios, such as, in the scenario that one of the proposed Garden Communities was required to be removed from the Plan, what would be the Council's relationship with the partner Authority. He considered that the report was recommending that no action be taken currently, and he questioned the validity of that approach, should it be approved by this Committee, given the unanimous approval of a Motion by the Council that a Plan B be presented to the

Committee. He sought clarification regarding the timescale for the likely publication of the Inspector's letter, given the commencement of the pre-election period towards the end of March 2020. He commented on the need for everyone to accept that the outcome from the Inspector would need to be respected, despite individual opinions. He stated his view, that if the Plan was found to be unsound, then those Councillors who had supported it would need to be prepared to take responsibility for the associated increase in housing numbers and the additional cost of developing a new Plan.

The Executive Director confirmed that representations were being accepted by the Inspector until 11 March 2020, as such, the publication of a letter was unlikely before the end of March 2020 at the earliest. He was of the view that the publication of the letter would not be delayed as a consequence of one Local Authority being subject to local elections. He confirmed his willingness to provide a member briefing for the Committee after the letter was received, not for decision-making purposes but to understand the issues raised in the letter. He was of the view that the Inspector would either rule out Section 1 or that the Inspector would accept Section 1 with modifications.

Councillor Ellis was also of the view that the report had not identified a Plan B and acknowledged that it would not have been realistic to expect the production of a complete alternative Plan. However, he was also concerned that no scenario planning had been undertaken, such as the potential options in the event that the Plan may be considered unsound. He confirmed his willingness to put in the time and commitment that would be required to shorten the timescales envisaged. He recollected the Executive Director previously verbally outlining what he considered a Plan B might comprise and he asked that the Executive Director provide a reminder of that scenario for the benefit of the Committee. He was of the view that, if Section 1 was found to be unsound, it would be on the basis of the Garden Community element and he was concerned that the views of some members of the Committee, to defer consideration of Garden Community projects to later in the life of the Plan had not been supported previously. He also acknowledged the potential for the Inspector to accept Section 1 of the Plan with one Garden Community project only and asked what impact this scenario would have on the relationship with each of the partnership authorities; on the link road proposals; the State Aid complaint; the affordable housing elements of the projects and the associated affordable housing ratios applied to the projects. He referred to the First Homes consultation document issued by the Government, the deadline for comments for which was April, and questioned why details of its contents had not been submitted to the Committee for consideration, given the important impact it may have on the Council's affordable housing provision. He was of the view that it would have been a very useful exercise for the Committee members to give consideration to the various options available in the context of the various scenarios which may come to fruition as a consequence of the Inspector's letter. He was of the view that the Committee should have been involved some time ago in the determination of housing numbers and additional capacity and, as such, a different view may have been agreed by the Committee. He was particularly concerned that a buffer of 16% had been referred to at

the examination hearing but this level of over-capacity had not been subject to consideration by the Committee. He asked for clarification on the current housing numbers for Colchester in the current year. He also sought clarification, should the Inspector find the Plan unsound, on whether there would be any scope to proceed with Section 2, subject to housing numbers being reviewed. He also referred to the need for a different perspective to be considered if there was a need to commence a new Plan from the beginning, in relation to the Council's recent Declaration of a Climate Emergency, such as in relation to transport modes, the encouragement of walking and cycling and building at higher density.

The Executive Director acknowledged the need to take into account Climate Change and for this to be applied to the work which had already been completed and he explained that climate change was one of the elements, along with greater housing numbers' associated with the new NPPF. As such, any change in strategy would bring with it a fundamental change in the scenario for the Borough and work would need to be undertaken to test a range of strategies to determine what would need to be applied. He explained that what was intended in terms of the flexibility in numbers was to progress the Plan at a much faster rate than had subsequently been the case. Earlier in the Local Plan process it hadn't been considered that there was a surplus in numbers and he explained that most of the surplus had been generated by the neighbouring Authorities through the appeal process. He further explained that Colchester's additional housing numbers had been as a result of bringing forward of developments in Section 2 in order to meet the five-year land supply requirement, which was judged on the new NPPF. He was willing to provide Councillors at forthcoming briefing sessions with an update on the housing numbers for the current year although he cautioned that, in reality, it was difficult to accurately count actual housing completions which were informed from Building Control returns. He acknowledged significant future issues in relation to affordable housing and explained that the challenge was to identify what mechanism would provide the best approach to deliver affordable housing. He explained that the First Homes consultation would usually be responded to by the Portfolio Holder but was of the view that the inclusion of the views of the Committee members may be possible to achieve. He explained that the emphasis of the consultation document was home ownership as the current Government's favoured tenure with no acknowledgement that an element of social housing would need to be delivered alongside this, as such, the contents of the document would have a significant impact on the funds available to provide affordable housing for those on lower household incomes. It was anticipated that the Garden Community projects may provide an ability to determine what affordable housing was delivered in the future. He explained that all Local Plans, if considered to be sound, would be subject to some form of modification but he cautioned that the Inspector's conclusions were likely to include matters which could be subject to interpretation or further clarification which could be addressed by means of a briefing for Committee members after the letter was published. He was of the view that, in the context of a formal Local Plan Committee meeting, it would be inappropriate for discussion to take place on various potential scenarios, including speculation about future relationships

with partner authorities, whilst he considered such discussions more appropriate in the context of briefings and workshops for Committee members.

Councillor G. Oxford referred to the Council's Local Plan process duty to co-operate and how this would be achieved in the context of comments suggesting the adoption of a Colchester only approach to the Local Plan. He voiced concerns about the ability of less affluent members of the community to access affordable housing, the reduction in council housing stock as a consequence of Right to Buy and that council housing was the only affordable option for many. He was particularly concerned about the provision of infrastructure and, in his view, the best opportunity to secure infrastructure and to manage the sales from the development was by means of the Garden Community projects and he advocated continuing this approach to the Local Plan.

Councillor Moore referred to a comment by a member of the public regarding the planning application at Brierley Paddocks, West Mersea and questioned the advice given to the Planning Committee members that Section 2 of the emerging Local Plan could be given considerable weight in determining the application. She considered this to be a significant anomaly given there was imminent potential that the Local Plan could be found unsound. She asked for clarification regarding the Council's relationship with North Essex Garden Communities Ltd (NEGC) should Section 1 of the Local Plan be found wholly or partly unsound and whether Option 1, to pause Section 1 and proceed with Section 2 of the Local Plan, as set out in the Inspector's original letter, was still available to the Council. She was also strongly of the view that the Council needed to formulate a Plan B so that there was an agreed contingency plan in place which could be enacted quickly should the Inspector's view be that the emerging Local Plan was unsound.

The Executive Director explained that, in planning terms, Section 2 of the Local Plan did carry a considerable degree of weight due to its status as a submitted document to the Secretary of State, whilst accepting that, in a short space of time, its status could be demoted. He also confirmed that the advice given to a Planning Committee at the time of the determination of an application had to be correct at that moment in time. He confirmed that the Council had a duty of co-operation with its neighbours and, whilst acknowledging there was no duty to agree, because Braintree and Tendring were the Council's main neighbours then joint discussions would have to continue whether or not the Garden Community projects were proceeded with. He was also of the view that, the duty of co-operation was such that, if a Local Plan was subject to an objection from a neighbouring Local Authority it would not be seen in a positive light by an Inspector. He explained that the purpose of NEGC was to deliver Garden Communities, as such, if the Garden Community project wasn't proceeded with, it would have no purpose. He considered that the Inspector's Option 1 was no longer available to the Council and he did not recommend asking the Inspector to clarify this point. He was, however, of the view that, the Council would want to explore proceeding with Section 2 of the Plan, should the Inspector find Section 1 unsound. He further explained that he did not

consider that to be a likely scenario, whilst acknowledging it was not a matter which had proved easy to predict in the past. He also confirmed that the Inspector had confirmed that his intention was to issue his letter as quickly as possible and that he was unlikely to suggest significant work or evidence to make the Plan sound.

Councillor Goss acknowledged that there were risks associated with the approach to the Local Plan process but that this was dependent on the outcome of the Inspector's letter; he referred to the complexity of the planning process; he did not support the view to restart the Local Plan process entirely, on the grounds that the housing numbers would increase, and he was of the view that the Committee should proceed with the emerging Local Plan, as submitted, so that the examination process could be concluded.

Councillor Ellis was of the view that potential scenario planning should be prepared for consideration by the Committee members at a briefing session, on the grounds that some contingency planning would be beneficial to the Committee at an early opportunity, prior to the publication of the Inspector's letter. He was also of the view that this would go some way to complying with the wishes of the Council meeting in October 2019.

*RESOLVED* (FIVE voted FOR and FOUR voted AGAINST) that the Local Plan, as submitted, be proceeded with in order to conclude the examination process.



14<sup>th</sup> July 2020

<b>Report of</b>	Assistant Director: Place and Client Services	<b>Author</b>	Laura Chase
<b>Title</b>	Local Plan: Inspector's Conclusions and Implications		
<b>Wards affected</b>	All wards		

## 1. Executive Summary

- 1.1 Following further examination hearings in January 2020, the Planning Inspector has issued a further 'post-hearing letter' to the North Essex Authorities on the shared Section 1 of the Braintree, Colchester and Tendring Local Plans.
- 1.2 The Inspector has concluded that two of the three proposed Garden Communities (the Colchester Braintree Borders Garden Community and West of Braintree Garden Community) are not viable or deliverable and therefore the Section 1 Local Plan, in its current form, is not sound.
- 1.3 The Inspector has however agreed that the Tendring Colchester Borders Garden Community is viable and deliverable and the housing and revised employment targets in the Local Plan are also sound, including the requirement of 920 homes a year in Colchester.
- 1.4 In the event that a Local Plan is found not to be sound, the Inspector must, if asked to do so by the local planning authority, recommend modifications to the Local Plan that would make it sound. The Council requested this through its previous decisions and will make a formal request to the Inspector to recommend main modifications to the Plan, if agreed, following this meeting.
- 1.5 The Inspector has given the North Essex Authorities (NEAs) two options for how to proceed: 1) to consult on the main modifications to remove the Colchester Braintree Borders and West of Braintree Garden Communities from the Local Plan and other necessary 'modifications'; or 2) withdraw the plan.
- 1.6 To continue with the Draft Local Plan the first option of consultation on the main modifications must be undertaken, otherwise the alternative position is that the Plan is withdrawn from examination and the Council will be required to start again. Ideally all three of the North Essex Authorities (Tendring, Braintree and Colchester) will come to the same conclusion.

## 2. Recommended Decisions

It is recommended that the Local Plan Committee;

- 2.1 Notes the findings of the Planning Inspector's letter dated 15 May 2020 (attached as Appendix 1 to this report) and his recommended modifications (attached as Appendix 2);

- 2.2 Accepts the Inspectors suggested main modifications, including the removal of both the Colchester Braintree Garden Community and the West of Braintree Garden Community from the Section 1 Local Plan for the purposes of soundness.
- 2.3 Subject to the views of the other North Essex Authorities and following the agreement of the Portfolio Holder for Culture and Performance, agrees to make a formal request to the Inspector to recommend main modifications for the purposes of soundness to allow the continuation of the present Local Plan process in accordance with timescales for the consultation exercise and subsequent stages agreed with the Inspector;
- 2.4 Notes that public consultation will be undertaken on all the main modifications recommended by the Planning Inspector to make the Local Plan sound;
- 2.5 Notes that an update to the Sustainability Appraisal (SA) and the Habitat Regulations Assessment (HRA) for the Modified Section 1 Local Plan will need to be produced and published for consultation alongside the Inspector's main modifications and that consultants LUC are already instructed to undertake this work;

### **3. Reason for Recommended Decision**

- 3.1 To facilitate adoption of a Local Plan for the Borough in order to provide a robust and sustainable basis for guiding future growth and development across the Borough.

### **4. Alternative Options**

- 4.1 The authorities cannot adopt the Local Plan contrary to the Inspectors findings. Therefore, if neither of the approaches outlined by the Inspector are considered acceptable then the NEAs would need to consider an alternative approach to challenge those findings. It should be noted that as the letter currently received is not his formal recommendation nor a decision it would not be itself challengeable by judicial review.
- 4.2 The alternative options available to the Council at this point would therefore be;
  - To ask the Inspector to consider further evidence on one or both Garden Communities which are proposed to be removed before making a final decision on the Local Plan
  - To lobby the Secretary of State to direct that the Plan is submitted for him to consider.
- 4.3 Both options would involve further cost and delay to the Local Plan process, including putting at risk the £99million Housing Infrastructure Funding secured to assist in the delivery of the Tendring Colchester Borders Garden Community. There is no guarantee that either potential challenge route would be successful. It should be noted that these routes to challenge the Local Plan are also available to other parties involved in the process such as developers or community groups.
- 4.4 Having considered the costs and benefits of the options across all three local authorities, officers therefore recommend that the Council endorses the Inspector's first option, to continue with the Plan process and consult on proposed modifications.

## 5. Background Information

- 5.1 Section 1 of the submitted Local Plan ('the Section 1 Plan') sets out an overarching strategy for future growth across Braintree, Colchester and Tendring – the 'North Essex Authorities' (NEAs). As well as including policies setting the overall housing and employment requirements for North Essex up to 2033, the Section 1 Plan proposed three new cross-boundary 'Garden Communities' along the A120 corridor with the potential for longer-term and comprehensively-planned growth. In contrast, 'the Section 2 Plan' for each of the three authorities contains more specific local policies and proposals relevant only to their individual area. Before a Local Plan can be formally adopted by a Council, it must be examined by a government-appointed Inspector whose job it is to check that 1) the plan has been prepared in line with various legal requirements and 2) that the policies and proposals in the plan comply with the 'tests of soundness' contained within the National Planning Policy Framework (NPPF).
- 5.2 Examination hearings for the Section 1 Plan first took place between January and May 2018; and in June 2018 the Inspector wrote to the North Essex Authorities highlighting concerns about the evidence and justification in support of the three Garden Communities. In response to the 2018 letter, the NEAs decided that they were committed to, and would continue to promote, Garden Communities as part of a long-term strategy for growth and would therefore undertake further work on the evidence base, including an Additional Sustainability Appraisal, aimed at satisfying the Inspector's concerns.
- 5.3 A significant number of technical documents were prepared and later considered and endorsed by the NEAs, including at a meeting of this Council's Local Plan Committee on 22<sup>nd</sup> July 2019. The documents were then published for six weeks consultation before being submitted to the Inspector. A number of further examination hearings were held in January 2020 aimed at examining and scrutinising the new evidence to enable the Inspector to reach some final conclusions on the legal compliance and soundness of the Section 1 Plan. Please see Appendix 3 at the end of this report for further background information on Section 1 plan preparation and examination.

### Findings

- 5.4 On 15 May 2020, the NEAs received a letter from the Inspector setting out his findings. The Inspector has concluded that, in its current form, the Section 1 Local Plan does not meet the government's tests of soundness. In particular, two of the three proposed Garden Communities have not been demonstrated to be economically viable or deliverable – thus making the overall plan unsound.
- 5.5 In coming to that conclusion, the Inspector has determined that the Councils have been too optimistic in their assumptions about 1) the rate of housebuilding that could be achieved on an annual basis at each of the Garden Communities; and 2) the costs of delivering a Rapid Transit System (RTS) linking all three Garden Communities to existing towns. These factors combined led the Inspector to conclude that both the proposed Colchester Braintree Borders Garden Community (at Marks Tey) and the West of Braintree Garden Community (near Rayne) are not likely to be economically viable or deliverable.
- 5.6 The Tendring Colchester Borders Garden Community (between Elmstead Market and Colchester) is however smaller; its delivery is less dependent on achieving very high rates of housebuilding on an annual basis; and Essex County Council has secured £99million of Housing Infrastructure Funding (HIF) to deliver the necessary A120/A133 link road and Rapid Transit System (RTS) linking the Garden Community to Colchester. The Inspector has therefore concluded that the Tendring Colchester Borders Garden

Community (TCB) is viable, deliverable and sound and could realistically deliver around 2,000 (of a total 7,000-9,000) homes between now and 2033.

- 5.7 Notwithstanding his rejection of two of the three Garden Communities, the Inspector has advised that the Councils have properly followed the relevant legal and procedural requirements and that the housing and revised employment targets set out in the plan are sound. He has also endorsed the Councils' approach to mitigating impacts of development on internationally important wildlife sites through the 'Recreational disturbance Avoidance Mitigation Strategy' (RAMS).

#### Options for how to proceed

- 5.8 Whilst the Inspector has found the plan to be unsound in its current form, he has advised that the plan has the potential to be 'made sound' and that it could still progress to adoption if the Councils agreed to remove the Colchester Braintree Borders and West of Braintree Garden Communities and consulted the public and other interested parties on this main modification, along with other main modifications to the plan recommended by the Inspector.
- 5.9 The main alternative to the above would be to withdraw the Local Plan from examination – effectively requiring all three Council's to start their plans again from scratch. As noted above, officers have also considered whether it would be possible to prepare further information and to persuade the Inspector that the proposals are sound. Officers do not believe that is achievable with the present evidence base and that further new evidence is unlikely to persuade the Inspector. It would also significantly delay the adoption of the Section 1 plans and the continuance of the Section 2 examinations.
- 5.10 To make the Plan sound it is necessary to proceed with 'Option 1' by removing two of the three Garden Communities from the plan and undertaking consultation on this, and other, main modifications. Braintree and Tendring District Councils are receiving the same advice within their reports.

#### Proposed Modifications

- 5.11 Officers have also received draft details of the main modifications to the Section 1 Local Plan, that the Inspector is likely to recommend – the majority of which take on board the suggested amendments that the Committee considered and agreed for consultation in 2019. The most notable of the additional being indicated by the Inspector are those that remove the West of Braintree and Colchester Braintree Borders Garden Communities from the policies and maps in the Section 1 Local Plan and any other references to those developments in the text of the plan.
- 5.12 Other modifications include a new policy on the 'Recreation disturbance Avoidance and Mitigation Strategy' (RAMS) and amendments to Policy SP4 'Providing for Employment' to update the employment land requirements for each of the three Councils to reflect the latest evidence..
- 5.13 The full schedule of draft recommended modifications is attached as Appendix 2. If the three authorities agree to proceed with the current Local Plan process, Officers will make a formal request to the Inspector to issue his finalised schedule of main modifications.

#### Implications for the Section 2 Local Plan and Garden Community DPD

- 5.14 Importantly, for Colchester, the Inspector has concluded that the Tendring Colchester Borders Garden Community is sound and can reasonably be expected to deliver around 2,000 homes up to 2033 (of which around 1,000 i.e. half, would contribute towards meeting Colchester's housing requirements). He has also re-confirmed the soundness of Colchester's objectively assessed housing requirement of 920 dwellings per annum, although this will need to be reviewed in light of the publication of the 2018 based household projections. Assuming that all three Councils agree to undertake public consultation on the necessary modifications to the Section 1 Local Plan (rather than withdrawing it from the examination), there should be no need to find any additional sites for housing for inclusion in Colchester's Section 2 Plan.
- 5.15 The Inspector has also confirmed Colchester's employment land requirement as being within the range of 22 and 30 hectares up to 2033 with a potential additional 25 hectares of employment land to be provided as part of the Tendring Colchester Borders Garden Community.
- 5.16 Confirmation of the soundness of the Tendring Colchester Borders Garden Community should also allow Tendring District Council and Colchester Borough Council to progress the work required for the preparation of a Development Plan Document (DPD) setting out more detailed parameters for the Garden Community. (Please see separate report on this).

#### Next steps

- 5.17 Subject to agreement by the three authorities, Officers will respond to the Planning Inspector to confirm that the North Essex Authorities agree to the removal, from the Section 1 Plan, of the Colchester Braintree Borders and West of Braintree Garden Communities and wish to proceed with the examination of the Local Plan by undertaking public consultation on this main modification along with other modifications recommended by the Inspector. The Inspector will be asked to formally issue his finalised schedule of main modifications and to advise the NEAs on the programme and timescales for the remainder of the examination.
- 5.18 The next stage would then be for the Councils to publish the main modifications for six-weeks consultation. Consultants LUC are preparing an update to both the Sustainability Appraisal (SA) and the Habitats Regulation Assessment (HRA) to assess the socio-economic and environmental impacts of the Section 1 Local Plan with the Inspector's recommended modifications and these documents will be published for consultation alongside the modifications. Any comments received will be submitted to the Inspector for his consideration before coming to a final decision on whether or not the Section 1 Plan, with those modifications, is sound and can be formally adopted. It is proposed that, subject to the Inspector's agreement, the 6-week consultation will take place between August and October 2020, following completion of the SA and HRA work.
- 5.19 The consultation will be only on the proposed main modifications set out in Appendix 2 to this report. It is not to consider the general merits or otherwise of the Local Plan and its contents (unless these relate to the main modifications). As such and given the current Covid 19 situation it is considered appropriate that this consultation will mostly take place online. However officers will ensure that a process is put in place to ensure that there are hard copies of the modifications to view for members of the public who may not have access to the website and that responses can be submitted via letter as well as email and through the Councils planning policy consultation system. Whilst in person events are not being planned, officers of this Council will be available to answer questions on the process of consultation via telephone and other virtual means as required throughout the length of the consultation process.

- 5.20 As with previous consultations during the examination process, the Inspector has asked to receive details of the consultation proposed and see copies of the consultation response forms and other materials being produced before the consultation period begins.
- 5.21 In the meantime, Officers will continue work to prepare for the examination of the Section 2 Local Plan and the preparation of the Tendring Colchester Borders Garden Community DPD. Once the three authorities have come to a decision on how to progress with the Section 1 Local Plan, the Planning Inspectorate will advise the Councils on the likely timetables for the Section 2 examinations.
- 5.22 Consideration will need to be given to the implications of the modifications on the section 2 Local Plans as well as any emerging or updating necessary to ensure the section 2 Local Plan is sound. Reports to the Local Plan Committee on this matter will follow, if the recommendation to continue with the Local Plan in this report is approved

## **6. Legal Implications**

- 6.1 The planning legislation and the National Planning Policy Framework (NPPF) (both the 2012 version applicable to this Local Plan and the new 2019 version) place Local Plans at the heart of the planning system, so it is essential that they are in place and kept up to date. The NPPF expects Local Plans to set out a vision and a framework for the future development of an area, addressing the needs and opportunities in relation to housing, the economy, community facilities and infrastructure, as well as providing a basis for safeguarding the environment.
- 6.2 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 (as amended) state that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The statutory development plan for Colchester, comprises the Core Strategy (2008, partly updated 2014), Site Allocations DPD (2010), Development Policies DPD (2010, partly updated 2014), the Tiptree Jam Factory Plan (2014), and various Neighbourhood Plans. A number of adopted policies have been found to be partially out of date. The NPPF states that where the development plan is out of date permission should be granted for sustainable development unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits or other policies indicate otherwise. It is therefore important to progress the emerging Local Plan through the remaining stages of the plan making process and ensure it meets the requirements of national planning policy so it can become the new statutory development plan and be relied upon by the Council acting as the Local Planning Authority.
- 6.3 Section 33A of the Planning and Compulsory Purchase Act 2004, as amended (the 2004 Act) places a legal duty upon local authorities and other public bodies to engage constructively, actively and on an on-going basis to maximise the effectiveness of Local Plan preparation, this is known as the 'Duty to Cooperate' on strategic matters of cross-boundary significance, which includes housing supply. Before a Planning Inspector can begin the process of examining a Local Plan, they need to be satisfied that the local

authority has demonstrated it has done everything it can to ensure effective cooperation with neighbouring authorities and other partner organisations and has sought to resolve, as far as is possible, any cross-boundary planning issues. In his letter, the Inspector has confirmed that the relevant authorities have, to date, met with this legal duty.

- 6.4 The Town and Country Planning (Local Planning) (England) Regulations 2012 make provision for the operation of the local development planning system including, for the purposes of this report, regulations relating to the preparation, publication and representations relating to a local plan and the independent examination.
- 6.5 Section 19 of the 2004 Act requires a local planning authority to carry out a Sustainability Appraisal of each of the proposals in a Local Plan and the consequence of reasonable alternatives, during its preparation and in addition prepare a report of the findings of the Sustainability Appraisal. More generally, section 39 of the Act requires that the authority preparing a Local Plan must do so “with the objective of contributing to the achievement of sustainable development”. The purpose of a Sustainability Appraisal is to ensure that potential environmental effects are given full consideration alongside social and economic issues.
- 6.6 Section 20(7C) of the 2004 Act provides that the Inspector must, if asked to do so by the local planning authority, recommend modifications to the local plan that would satisfy the requirements mentioned in subsection 20(5)(a) to make it sound. The NEA Councils have previously made this decision prior to the initial submission and again in preparation for the last examination however, it is recommended that it is repeated at this stage to give the Inspector maximum assurance that the Council's request is up to date based on the contents of his letter in May 2020. If the authorities agree to consult on the Inspector's recommended modifications, it is proposed that the Inspector is asked to recommend any specific further modifications that might or might not be required in response to further any representations received as part of the consultation exercise.
- 6.7 If the North Essex Authorities (NEAs) agree to proceed with modifications to the Section 1 Plan, along the lines advised by the Inspector, a further Sustainability Appraisal of the modified plan will need to be undertaken and published for consultation alongside the modifications. Consultants LUC have been instructed to carry out this work along with an update to the Habitat Regulations Assessment (HRA).
- 6.8 The NPPF requires a local planning authority to submit a plan for examination which it considers to be “sound” meaning that it is: positively prepared, justified and effective. The job of the Planning Inspector is to test that the Local Plan meets legal and procedural requirements and the above tests of soundness. The Inspector has confirmed that legal and procedural requirements have been met but that the Section 1 Local Plan, in its current form, is not sound. The Inspector has indicated that the Section 1 Local Plan could be made sound through modifications, which would have to include the removal of the Colchester Braintree Borders and West of Braintree Garden Communities. These modifications and the others recommended by the Inspector need to be published

for consultation in their own right before the Council could proceed to the adoption of Section 1 and the examination of Section 2.

- 6.9 The terms of reference of the Local Plan Committee includes the exercise of the Council's functions, powers and duties in relation to the preparation of the Council's Local Plan, including ensuring that it meets the "tests of soundness" set out in the NPPF. This report does not require any recommendations to Full Council, which will be required at the next stage of the process once the Planning Inspector's report is received for final adoption of Section 1.
- 6.10 It is necessary to seek the agreement of the Portfolio Holder for Culture and Performance to the proposed approach due to the strategic nature of the suggested main modifications and as Portfolio Holder for the Local Plan. The Portfolio Holder has confirmed that she agrees with proceeding with the proposals set out for the purposes of soundness.

## **7. Equality, Diversity and Human Rights implications**

- 7.1 An Equality Impact Assessment has been prepared for the Local Plan, and is available to view by clicking on this link:-  
<https://cbccrmdata.blob.core.windows.net/noteattachment/CBC%20-%20How%20The%20Council%20Works%20-%20Policy%20and%20Corporate%20Equality%20Impact%20Assessments%20-%20Local%20Plan.pdf>

## **8. Strategic Plan References**

- 8.1 Adoption of a Local Plan addresses all of the GROW objectives of the Strategic Plan as it is required to guide development to ensure Colchester becomes an even better place to live, work and visit.

## **9. Consultation Implications**

- 9.1 If the North Essex Authorities (NEAs) all agree to proceed with modifications to the Section 1 Local Plan, along the lines indicated by the Planning Inspector (including the removal of the Colchester Braintree Borders and West of Braintree Garden Communities), those main modifications would need to be the subject of six-weeks public consultation to invite any final comments before the Inspector can come to a decision on the soundness of the plan.
- 9.2 The consultation will be confined to the recommended modifications. Comments will not be invited on other elements of the plan not recommended for modification (and which are therefore presumed to be sound). The updated Sustainability Appraisal (SA) and Habitats Regulation Assessment (HRA) will however be published alongside the modifications and comments on those documents will be invited. It is proposed, subject to the Inspector's agreement and completion of the SA and HRA work, that the consultation exercise will run for 6 weeks between August and October 2020 with the relevant documents being published on the Braintree District Council website (with links from the Tendring and Colchester websites), with hard copies made available to view at Council Offices and public libraries subject to their opening hours and arrangements in



light of the coronavirus COVID-19 pandemic. Consultees and those on the Councils' respective databases will be notified and there will be publicity via a number of media channels. The nature of the consultation exercise will not necessitate any public meetings, exhibitions or other face to face events.

- 9.3 Following the consultation the NEAs will process all representations received and submit them (alongside the documents subject to the consultation) to the Inspector's Programme Officer.

## **10. Publicity Considerations**

- 10.1 The Council has worked closely with its partner North Essex Authorities to coordinate and publicise information on the Local Plan examination process. All documents are available on the examination website hosted by Braintree District Council.
- 10.2 The Local Plan is likely to generate significant publicity for the Council as it has done previously.

## **11. Financial implications**

- 11.1 The production and examination of the Local Plan has been undertaken within an allocated budget, including updating of evidence documents, consultation and examination.

## **12. Health, Wellbeing and Community Safety Implications**

- 12.1 Adoption of a new Local Plan will address the health, wellbeing and community safety implications of creating sustainable communities

## **13. Risk Management Implications**

- 13.1 The examination of Section 1 of the Local Plan has been funded jointly by the North Essex Authorities through their respective LDF/Local Plan budgets. Any consultation on the main modifications recommended by the Inspector may result in further objections; however, unless they raise fundamental issues which require re-examination, they are unlikely to result in further significant changes. If however they do, there is a risk of further delay to the examination process for Section 2 of the Local Plan.
- 13.2 There is also a risk of legal challenge following the adoption of the Local Plan if any party believes that the Inspector or the Councils have made any legal or procedural errors. This risk has however been minimised with the Inspector taking particular care to thoroughly examine legal and procedural matters, twice, as part of the examination process. With the Inspector recommending the removal of the Colchester Braintree Borders Garden Community and the West of Braintree Garden Community from the Section 1 Local Plan, a legal challenge is now more likely to come from aggrieved landowners and developers that had been promoting those schemes, although local campaign groups or residents also have the right to apply for a legal challenge. There are no obvious grounds that would justify such a challenge. In particular, the NEAs contest the relevance of the legal decision on the Heathrow approval which found that it did not take account of climate change legislation (see appendices 1, 2 and 3 for further details).

- 13.3 The Inspector has now given clear advice on the how the Section 1 Plan ought to be modified in order to meet the government's tests of soundness and for the Councils to proceed to the next stages of the plan-making process. If however for any reason a Council wishes to take the decision to abandon or withdraw the plan, either at this stage or at any time before the plan reaches formal adoption, it will have implications for the other two authorities. It would be likely to require the authorities to begin the plan-making process again, either jointly, in partnership or individually. Whilst some of the technical evidence prepared to date could be used to inform the preparation of a new plan(s), the majority of evidence base documents would need to be revised and the plan itself would have to follow a different format to reflect the requirements of the new NPPF that was published in 2018 and updated in 2019. To meet with legal and procedural requirements, the three-stage plan-making process would need to start from scratch, with the first stage being consultation on issues and options and a call for sites.
- 13.4 Section 1 of the Local Plan was individually submitted by the North Essex Authorities but applies equally to all three Councils. Therefore, for the current plan to proceed, each authority should ideally agree to remove the Colchester Braintree Borders and West of Braintree Borders Garden Communities from the plan in line with the Inspector's findings. Should either Braintree District or Tendring District Council postpone or make an alternative decision, Members at Colchester will need to consider their position. The outcome of the Local Plan Committees for Braintree and Tendring, and any resulting implications, will be reported to Members as appropriate.
- 13.5 Whilst the Inspector has re-confirmed that the 920 homes a year figure in the Section 1 Plan is sound, he does say in paragraph 272 of his letter that, if the NEAs decide to proceed with his recommended first option of removing two of the three Garden Communities from the plan and consulting on modifications *"if the official 2018-based household projections are published while the examination is still in progress, consideration will need to be given to any implications the projections may have for the soundness of the housing requirement figures in the Plan"*. The projections have been published and consultants are currently reviewing the implications for each of the authorities. A verbal update will be given.

## **14. Environmental and Sustainability Implications**

- 14.1 The Council has declared a Climate Emergency and has committed to being carbon neutral by 2030. The purpose of the planning system is to contribute to the achievement of sustainable development as defined in the National Planning Policy Framework. Achieving sustainable development means that the planning system has three overarching objectives, economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways through the plan-making process. Accordingly, the preparation of the Section 1 of the Local Plan has taken these objectives as its starting point.
- 14.2 This report has taken into account the Climate Emergency and the sustainable development objectives set out in the NPPF. It is considered that the report demonstrates that adoption of Section 1 of the Local Plan can contribute to achieving sustainable development.

## **Appendices**

Appendix 1 Letter from Planning Inspector Roger Clews dated 15 May 2020

Appendix 2 Inspector's recommended Main Modifications to the Section 1 Local Plan

Appendix 3 Background Information

### **Background Papers**

Paper by Rosie Pearson (CAUSE) and Matthew O'Connell entitled 'Relevance of Heathrow Court of Appeal Decision for Section 1 North Essex Authorities Local Plan' (March 2020).

Letter from the North Essex Authorities (NEAs) to the Planning Inspector providing a response to the issues raised in the paper from Ms. Pearson and Mr. O'Connell (XX July 2020).



## **NORTH ESSEX AUTHORITIES**

### **Shared Strategic (Section 1) Plan**

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To:

Emma Goodings, Head of Planning and Economic Growth, Braintree District Council

Karen Syrett, Planning and Housing Manager, Colchester Borough Council

Gary Guiver, Planning Manager, Tendring District Council

15 May 2020

Dear Ms Goodings, Ms Syrett and Mr Guiver

### **EXAMINATION OF THE SHARED STRATEGIC SECTION 1 PLAN**

#### **Introduction**

#### ***Purpose of this letter***

1. My letter to the North Essex Authorities [NEAs]<sup>1</sup> of 8 June 2018 [examination document IED/011] set out the shortcomings which, on the evidence available to me at that time, I had identified in the submitted Section 1 Plan and its evidence base. My letter went on to outline the significant further work which I considered the NEAs would need to undertake in order to address those shortcomings, and to set out three options for taking the examination forward.
2. The NEAs decided to pursue Option 2, which involved them producing and commissioning a number of additional evidence base documents with the aim of overcoming the deficiencies I had identified. The examination of the Section 1 Plan was paused from December 2018 until the end of September

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<sup>1</sup> The three NEAs in the context of this letter are Braintree District Council, Colchester Borough Council, and Tendring District Council.

2019 while this further work was carried out and public consultation on the additional evidence took place. I read all the responses to the public consultation, and held further hearing sessions in January 2020 focussing mainly on the additional evidence base documents and the responses to them.

3. I am now in a position to advise the NEAs of my findings, based on the evidence currently before me, on the legal compliance and soundness of the Section 1 Plan, and on the options available to them as a result. In giving this advice, I have taken into account all the written and oral evidence and representations that have been submitted to the examination since it began in October 2017.
4. The examination has now been in progress for two-and-a-half years. It would be in no-one's interests for uncertainty to be prolonged any further. My advice in this letter is therefore given on the basis that it is desirable for the examination of the Section 1 Plan to be brought to a conclusion as soon as possible.
5. This letter focusses on the matters that I consider critical to the outcome of the examination, and sets out my views on those matters. My formal recommendations and the full reasons for them will be given in my report to the NEAs at the end of the examination.
6. This letter should be read in conjunction with IED/011 and also with my supplementary letter to the NEAs of 27 June 2018 [IED/012], in which I gave my views, based on the evidence available to me at that time, on the housing requirements set out in policy SP3 of the Section 1 Plan.
7. The Programme Officer recently forwarded to the NEAs a paper entitled *Relevance of Heathrow Court of Appeal Decision for Section 1 North Essex Authorities Local Plan* [EXD/091], submitted by Mrs Pearson of CAUSE and Mr O'Connell. I would be grateful if the NEAs would provide a response to that paper along with their response to this letter. When I have the NEAs' response I will consider whether any further action is needed on this matter.

### **Context**

8. Before addressing the critical matters I have identified, it is necessary to set the context by considering the overall structure and purpose of the Section 1 Plan. Although it was produced by the three NEAs and covers the whole of the Braintree, Colchester and Tendring local authority areas, it was not produced as a joint plan under the provisions of section 28 of the *Town and Country Planning Act 2004*, as amended ["the 2004 Act"].

Instead, it is intended that the Section 1 Plan (with identical content and wording) will form an integral part of each NEA's individual Local Plan, alongside a Section 2 Plan which each NEA has prepared independently. Because the Section 1 Plan is common to all three NEAs, it is being examined as a single entity, separately from and in advance of the three Part 2 plans.

9. The Section 1 and Section 2 Plans have distinct and complementary roles. Section 1 deals with cross-boundary issues: it provides a spatial portrait of and a strategic vision for the North Essex area, sets out the requirements for housing and employment growth for each of the three districts, and highlights key strategic growth locations across the area<sup>2</sup>. The Section 2 Plans are intended to operate at individual local authority level, providing the strategy for the distribution of, and identifying sites for, most of the new development which each NEA proposes to accommodate in its district.
10. Most significantly, the Section 1 Plan proposes the development of three garden communities [GCs] in North Essex. Two would occupy cross-boundary sites, at Tendring / Colchester Borders and Colchester / Braintree Borders, to the east and west of Colchester respectively. The third would be to the West of Braintree, next to the border with Uttlesford district.
11. The broad locations identified for the three GCs amount to over 2,000 hectares in total, and the Plan, as submitted, expects them to provide up to 43,000 dwellings altogether. Because of their scale, only a relatively small proportion of the development they are proposed to contain would be completed by the end of the plan period in 2033, with the rest coming forward over several decades into the future. Indeed, it is envisaged that the largest of the proposed GCs would not be completed until around the end of this century.
12. The NEAs have appropriately high aspirations for the quality of development at the proposed GCs. A *North Essex Garden Communities Charter*, based on the Town & Country Planning Association's Garden City Principles, but adapted for the North Essex context, sets out 10 place-making principles that articulate the Councils' ambitions for the GCs. In accordance with those principles, the Plan itself expects the GCs to exhibit "the highest quality of planning, design and management of the built and public realm"; to "provide for a truly balanced and inclusive community and meet the housing needs of local people ... including 30% affordable housing at each GC"; to "provide and promote opportunities for employment within each new community and within sustainable commuting distance of it"; and to be planned "around a step change in integrated and

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<sup>2</sup> See the Section 1 Plan, para 1.13.

sustainable transport networks ... that put walking, cycling and rapid public transit networks and connections at the heart of growth in the area”<sup>3</sup>.

13. These policy requirements appropriately reflect the advice at paragraph 150 of the 2012 NPPF that Local Plans are the key to delivering sustainable development which reflects the vision and aspirations of local communities. More specifically, NPPF paragraph 52 advises that

The supply of new homes can sometimes best be achieved through planning for larger scale development, such as new settlements ... that follow the principles of Garden Cities. Working with the support of their communities, local planning authorities should consider whether such opportunities provide the best way of achieving sustainable development.

In reflecting garden city principles, therefore, the Plan’s policies for the GCs are consistent with the NPPF’s guidance on the way in which sustainable development can be achieved through the development of garden communities.

14. The Section 1 Plan identifies broad locations for the proposed GCs and contains strategic policies to govern their development. After it has been adopted the NEAs intend to bring forward Strategic Growth Development Plan Documents [DPDs] to define specific areas within the broad locations where development will take place, and to set more detailed requirements for the development of the GCs. The NEAs also envisage that masterplans, and other planning and design guidance, will be prepared for each GC.

### **My role**

15. My role is to examine the Section 1 Plan [hereafter referred to for brevity as “the Plan”] in order to determine whether or not it meets the relevant legal requirements and is sound<sup>4</sup>. In determining its soundness I must have regard to national policy in the *National Planning Policy Framework* [NPPF] as published in March 2012. (The March 2012 version of the NPPF, rather than the current version, applies in this examination because the Plan was submitted for examination before the date specified in relevant transitional provisions<sup>5</sup>.) If I find that the Plan is not legally-compliant or sound, I am empowered to recommend main modifications to make it so, if the NEAs ask me to.

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<sup>3</sup> Submitted Plan policy SP7

<sup>4</sup> The 2004 Act, section 20(5)

<sup>5</sup> 2019 NPPF, para 214. Any previous national Planning Practice Guidance which has been superseded since the new NPPF was first published in July 2018 also continues to apply.



16. It is this Plan which will establish whether or not the proposed GCs are acceptable in principle. In considering the soundness of the Plan I have been mindful of the need not to stray into matters of detail that would be more appropriately dealt with in the Strategic Growth DPDs or masterplans. I have also paid careful attention to the support given in national planning policy for the development of settlements that follow Garden City principles<sup>6</sup>, and to the fact that the Government has provided direct support for the North Essex GC proposals through its Garden Communities Programme.
17. My examination of the Plan has been informed by a great deal of detailed evidence, both supportive of and critical of the Plan's proposals. Although it is not possible or indeed necessary for me to refer to every point that was raised in the evidence, I am grateful to everyone who has invested their time and effort in contributing to the examination so far.

***The proposed West of Braintree GC and the former emerging Uttlesford Local Plan***

18. The former emerging Uttlesford Local Plan, which was under examination until 30 April 2020, contained a proposal to identify land in Uttlesford district to form a cross-boundary GC in combination with the proposed West of Braintree GC in North Essex. Land in Uttlesford district cannot be identified or allocated for development by the NEAs, and so it is not for me in this examination to determine whether or not any such proposal is sound.
19. In January 2020 the Inspectors examining the former emerging Uttlesford Local Plan wrote to the Council expressing significant concerns about the soundness of that plan, and indicating that in their view withdrawal of the plan from examination was likely to be the most appropriate option. In paragraph 2 of their letter, they said  
  
In particular, we are not persuaded that there is sufficient evidence to demonstrate that the Garden Communities<sup>7</sup>, and thus the overall spatial strategy, have been justified. We therefore cannot conclude that these fundamental aspects of the plan are sound.
20. On 1 May 2020 Uttlesford District Council wrote to notify the Planning Inspectorate of their decision to withdraw the plan. In the light of that decision, and of the examining Inspectors' comments above, no assumption can be made that any of the GC proposals in the former emerging

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<sup>6</sup> 2012 NPPF, para 52

<sup>7</sup> Three GCs were proposed in the former emerging Uttlesford Local Plan, namely West of Braintree, Easton Park, and North Uttlesford.

Uttlesford Local Plan will be included, and found sound, in any future version of that plan. I take this into account when considering the Plan as a whole, and the proposed West of Braintree GC in particular.

### ***Legal compliance***

21. In IED/011 I concluded that each of the NEAs had met the duty to co-operate in the preparation of the Section 1 Plan, and that they had met the relevant procedural requirements with regard to consultation and submission. There has been no subsequent evidence which alters those conclusions. Nor do I find any evidence that anyone's interests were materially prejudiced by the way in which consultation was publicised and carried out in August and September 2019 on the additional evidence prepared by the NEAs.
22. There are legal obligations on the NEAs to prepare and submit a Habitats Regulations Assessment and a Sustainability Appraisal of the Plan. I consider these below.

### ***Soundness***

23. At paragraph 182 the 2012 NPPF advises that the soundness of plans is to be examined by reference to four criteria. The Plan undoubtedly meets the first of these. It has been **positively prepared** with the aim of identifying development and infrastructure requirements for the plan period, and it includes the proposed GCs which are intended to make a substantial contribution to meeting those requirements, both in the plan period and beyond.
24. When considering whether or not the Plan is **justified** – that is, whether it is the most appropriate strategy when considered against the reasonable alternatives – the principal evidence base document before me is the Sustainability Appraisal [SA]. I therefore consider the SA in detail below.
25. The NEAs' purpose in producing the Section 1 Plan was to work across local authority boundaries in order to meet strategic priorities. The key question in deciding whether or not the Plan is **effective**, therefore, is whether it is deliverable.
26. There was some discussion at the hearing sessions about the meaning of the word "deliverable" in this context, and I was assisted by further representations, including legal submissions, on the point. In my view the straightforward meaning of the word, ie "able to be delivered", is to be

preferred<sup>8</sup>. But that then raises the question of what it is that must be able to be delivered.

27. The relevant sentence of NPPF paragraph 182 says that the plan should be deliverable. It seems to me that, in this context, the term “the plan” has to be taken to include the policies and proposals in the plan. It would not make sense only to require that the plan document itself is deliverable, if the policies and proposals it contains are not.
28. The sentence also includes the qualification “over [the plan’s] period”. It was suggested that this means that I need not consider whether the GC proposals in the Plan are deliverable beyond the end date of the Plan in 2033. But, as will be seen when I consider the SA below, the advantage which the SA identifies for the Plan’s strategy is that “it provides clear direction for strategic development over many decades to come”. In my view, the Plan could not be considered to be sound if I were to find that the proposed GCs were justified having regard to their ability to provide for strategic development over many decades to come, but reached no finding on whether or not they were deliverable beyond 2033.
29. The 2012 NPPF advises at paragraph 177 that it is important to ensure that there is a reasonable prospect that planned infrastructure is delivered in a timely fashion. The Plan’s policies include a comprehensive set of infrastructure requirements for the GCs, which (in accordance with national policy) appropriately reflect the garden city principles that underpin them<sup>9</sup>. In considering whether the GCs are deliverable, therefore, it is also necessary to take into account whether or not the infrastructure necessary to support them is deliverable.
30. Below I consider in detail the deliverability of the necessary supporting infrastructure and of the proposed GCs themselves.
31. The NPPF’s fourth soundness criterion is that the Plan is **consistent with national policy**, that is, it enables the delivery of sustainable development in accordance with the NPPF’s policies. I consider whether or not the Plan meets this criterion in my overall conclusions on soundness.
32. In considering the soundness of the Plan it is also necessary to review, in the light of current circumstances, the conclusions I reached in IED/011 on the housing requirement figures in the Plan. I deal with that matter first.

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<sup>8</sup> The definition of deliverable sites at footnote 11 in the 2012 NPPF is given in the context of the guidance in NPPF para 47 on the five-year housing land supply, not in the context of the para 182 test.

<sup>9</sup> See paras 12-13 above.

### **The housing requirement figures in the Plan**

33. By virtue of the transitional provisions referred to at paragraph 15 above, the guidance on determining housing need at paragraph 60 of the 2019 NPPF does not apply to the Plan: instead the assessment of housing need was appropriately carried out based on guidance in the 2012 NPPF and the corresponding PPG. In IED/011 I concluded that the housing requirement figures for each of the NEAs, as set out in submitted policy SP3, represent their respective objectively-assessed housing needs, and accordingly that the Plan's housing requirements are soundly based.
34. NPPF paragraph 158 requires plans to be based on up-to-date evidence. Given the time that has elapsed since June 2018, it is therefore necessary to consider whether there has been a meaningful change in the situation regarding housing need<sup>10</sup> in North Essex, which would justify a reconsideration of the Plan's housing requirements.
35. Factors that might indicate a meaningful change in housing need include population and household projections and employment forecasts published since June 2018, and any changes in market signals.

#### *Population and household projections*

36. The official 2016-based household projections, published in September 2018, show higher household growth for Colchester borough and Tendring district over the 2013-37 period than the corresponding 2014-based projections. However, for Braintree district they show the opposite, such that the additional growth in Colchester is effectively matched by lower growth in Braintree. Since Braintree and Colchester are part of the same housing market area, redistribution of household growth from one to the other does not constitute a meaningful change in housing need overall.
37. For Tendring district the evidence from recent population and household projections has to be considered in the context of my finding in IED/011 that the NEAs were justified in not using official household projections as the basis for assessing housing need in the district. My full reasons for reaching that finding are given in IED/011, but to summarise briefly, Tendring has one of the highest rates of Unattributable Population Change [UPC]<sup>11</sup> in the country. The evidence before me in June 2018 showed that

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<sup>10</sup> See PPG ID Ref 2a-016-20150227

<sup>11</sup> UPC is the term for the unexplained difference between the population change between 2001 and 2011 as estimated by the Censuses in those years, and the population change over the same period as predicted by official projections.

this was due in substantial part to errors in the migration trend rates used to produce the official population projections, and that it was highly likely that those errors were continuing to distort the official household projections for Tendring, to the extent that the NEAs were justified in using a different basis for assessing future housing need.

38. The official 2016-based sub-national population projections [SNPP] were before me when I considered the issue of UPC in Tendring in IED/011. They form the basis for the 2016-based household projections. Consequently, the publication of the 2016-based household projections does not alter my conclusions on that issue.
39. Since June 2018 the official 2017 and 2018 mid-year population estimates [MYE] have also been published. The fact that the 2018 MYE figure for Tendring closely matches the 2018 population predicted by the 2016-based SNPP is in itself no indication of a meaningful change in the housing situation, since both are informed by the same migration trend rates. I note that the Quality Indicators published alongside the MYEs estimate that there is a relatively low proportion of hard-to-estimate groups (including internal migrants) in Tendring. However, I have seen no evidence that since June 2018 the Office for National Statistics has addressed the specific errors in migration trend rates that gave rise to a substantial part of the exceptional UPC for Tendring.
40. The increasing proportion of older people in the North Essex population may affect the type of housing that needs to be provided, but has no impact on the overall number of dwellings required, as it is accounted for in the population and household projections. Policies on housing type are a matter for the Section 2 Plans.

#### *Employment forecasts*

41. In calculating objectively-assessed housing needs, account was taken of two 2016 economic forecasts of job growth and associated dwelling requirements over the Plan period. The housing requirements for Braintree and Colchester meet the higher of the dwelling requirements from those two forecasts, from the East of England Forecasting Model [EEFM]. A bespoke economic forecast for Tendring similarly showed that its housing requirement would meet future labour demand in full. As a result, in IED/011 I found that economic growth in North Essex would not be hampered by any lack of housing.
42. Since June 2018 a more recent, 2017 forecast from the EEFM has been published. Compared with the 2016 forecast, it shows a reduction of 96 dwellings per annum [dpa] in the dwelling requirements for Braintree, and

an increase of 202dpa for Colchester. For Tendring there is no significant change. On the face of it, these results might appear to indicate a potential increase in housing need for North Essex as a whole.

43. However, whereas the 2016 EEFM forecast for Colchester predicted growth of 928 jobs per annum and a corresponding dwelling requirement of 920dpa, in EEFM's 2017 forecast the jobs per annum figure fell to 724 while the dwelling requirement increased to 1,122dpa. This is a dramatic and apparently anomalous change from EEFM's 2016 figures, and it diverges to an even greater extent from the 2016 forecast by Experian (1,109 jobs per annum, 866dpa).
44. Since I was given no explanation for this apparent anomaly, I consider that substantially less weight should be given to EEFM's 2017 forecast than to the two 2016 forecasts, when assessing housing need. In my experience, economic forecasts can show significant variations from one year to the next, and without corroboration it would be unwise to place reliance on a single set of results. Consequently, I find that the EEFM 2017 forecast does not indicate a need to increase the Plan's housing requirements in order to meet labour demand.

#### *Market signals*

45. Evidence of market signals since June 2018 tends to indicate worsening affordability across North Essex in respect of both house prices and rents, relative to England and Wales as a whole. However, worsening affordability trends were already apparent when the objectively-assessed housing needs were assessed in 2016, and were taken into account in uplifting the housing requirement for each of the three NEAs' areas by at least 15% compared with the demographic starting-point.
46. As a result, the Plan already makes substantial provision to improve affordability over the Plan period. It would be unrealistic to expect any turn-around in affordability trends to have occurred in the past one or two years, especially since the Plan has not yet been adopted. No meaningful assessment of the Plan's impact on affordability can be made after such a short time. As a result, recent market signals evidence does not indicate that the Plan's housing requirements need to be reviewed.

#### *Conclusion on the housing requirement figures*

47. For these reasons, I conclude that neither the population and household projections and employment forecasts published since June 2018 nor recent evidence from market signals indicate that there has been a meaningful change in the housing situation that I considered in IED/011.

Consequently, the Plan's housing requirement figures remain soundly based.

### **Habitats Regulations Assessment [HRA]**

48. In IED/011 I referred to a judgment of the Court of Justice of the European Union [CJEU]<sup>12</sup> and indicated that the NEAs would need to ensure that the HRA report on the pre-submission Plan was consistent with that judgment. In response, the NEAs commissioned Land Use Consultants [LUC] to produce an updated HRA report on the Plan [EB/083]. The updated report takes account of recent caselaw including the judgment I referred to. It concludes:

... providing that key recommendations and mitigation requirements are adopted and implemented, the [Plan] will not result in adverse effects on the integrity of European sites either alone or in-combination.

Natural England concur with this conclusion.

49. The NEAs consider that the Habitats Regulations<sup>13</sup> do not require an assessment of future growth beyond the Plan period. Nonetheless, both they and LUC made it clear that EB/083 does in fact take account of the implications for European sites of the development beyond 2033 that is proposed in the Plan – ie, future growth at the proposed GCs. In my view that is appropriate, since the Plan's policies envisage that development of the GCs will occur both within the Plan period and for a long period beyond. However, some references in the report appear to indicate that it considers impacts within the Plan period only. The NEAs and LUC should review those references so that the report is consistent on this point.
50. EB/083 follows a sound methodology, beginning with a screening stage to assess the likelihood of significant effects on European sites by the Plan's proposals (alone or in combination). This is followed by an Appropriate Assessment in which any likely significant effects are assessed, in the light of avoidance and mitigation measures, in order to determine whether or not they would result in an adverse effect on the integrity of any European site.
51. I consider that it is reasonable for EB/083 to conclude that main modifications to Plan policies SP5, SP7, SP8, SP9 and SP10, requiring adequate waste water treatment capacity to be provided before dwellings

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<sup>12</sup> *People over Wind, Peter Sweetman v Coillte Teoranta* [CJEU Case C-323/17]

<sup>13</sup> *The Conservation of Habitats and Species Regulations 2017*

are occupied, will ensure that no adverse impact on any European site will occur as a result of changes in water quality.

52. It is also reasonable for EB/083 to conclude that any adverse impacts arising from loss of offsite habitat<sup>14</sup> for wintering birds will be avoided provided that mitigation safeguards are incorporated into the Plan through a main modification to policy SP8. Those safeguards include requirements for surveys of the broad location of the Tendring / Colchester Borders GC to identify whether it provides any functionally-linked offsite habitat for relevant bird species, and if necessary, phasing of development and provision of alternative offsite habitat to offset any loss resulting from development.
53. The size of the broad location means that there is no real doubt that alternative habitat could be provided on site, through the DPD and master-planning processes, if it were found to be necessary. Accordingly, it is not necessary for the surveys to take place before the Plan itself is adopted.
54. The other cause of likely significant effects identified by EB/083 is the impact of the recreational activities of future residents on European sites along the Essex coast and its estuaries. This is also a concern for other local authorities in Essex. In response, an Essex Coast Recreational avoidance and Mitigation Strategy [RAMS], initiated by Natural England, has been adopted by 11 Essex authorities. Its implementation is managed by a steering group on which Natural England is represented.
55. The RAMS, which is to be funded by a per-dwelling tariff on residential development, involves a range of measures including habitat creation, access management, information and consciousness-raising, and enforcement. EB/083 concludes that the RAMS provides a high degree of certainty that recreational pressures will not lead to adverse effects on the integrity of the European sites.
56. In my view, EB/083 has adequately assessed the likelihood of significant effects arising from recreational activities, including by identifying appropriate zones of influence based on visitor surveys. It may be that measures to control airborne activities, such as powered paragliding, are more difficult to enforce than for land- or water-based activities. But airborne activities involve relatively small numbers of people, whom it would be possible to target with information and education campaigns. Indeed I was told that such campaigns are already under way.

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<sup>14</sup> "Offsite habitat" in this context means habitat that is not part of a European site but is functionally linked to it, providing ecological support for the bird populations for which the site was designated.



57. The current RAMS covers the period 2018 to 2038. However, the NEAs made it clear that they intend the RAMS approach to operate in perpetuity. Plainly, that will be essential if significant development within the zones of influence is to be able to continue beyond 2038, assuming that the Habitats Regulations (or a similar protection regime) remain in force. Funding arrangements to ensure that it occurs are proposed in the current RAMS document. I therefore see little danger that the RAMS approach will cease after 2038.
58. The RAMS includes provision for monitoring its effectiveness, which it is intended will feed back into the mitigation measures in an iterative fashion, enabling adjustments and improvements to be made in response to evidence of how successful the measures are. In my view this is a strength rather than a weakness of the RAMS approach. While there is currently no conclusive evidence that RAMS approaches elsewhere have ensured that no adverse effects on integrity have occurred, that is not because there is evidence that they have failed, but because they have not been operating long enough for definitive conclusions to be drawn.
59. Taking into account the mitigation measures, which as well as the RAMS include the proposed modifications to the Plan's policies, the NEAs are satisfied that there is sufficient certainty that the Plan would not adversely affect the integrity of any European site, alone or in combination. In the light of all the above points, I consider that they are justified in taking that view.

## **Justification for the proposed GCs**

### ***Sustainability Appraisal***

#### *Background*

60. In IED/011 I identified a number of shortcomings in the June 2017 SA of the Plan carried out by Essex County Council [ECC]'s Place Services [SD/001], and made a number of specific suggestions as to how those shortcomings might be rectified. In response, the NEAs commissioned external consultants LUC to carry out an Additional Sustainability Appraisal of the Plan [SD/001b, hereafter "the ASA"], which was completed in July 2019.
61. The ASA does not replace the June 2017 SA in its entirety: its purpose is to address my concerns about the approach of that earlier SA document to the assessment of alternative GC options and of alternative spatial strategies. Accordingly, the ASA replaces Appendix 1 of the June 2017 SA,

which deals specifically with these matters, and provides further appraisal information relevant to chapters 4 to 7 of the June 2017 SA. In this letter I focus on the ASA, as it is specifically intended to redress the shortcomings I had previously identified.

62. The ASA has a two-stage methodology, which closely follows my suggestions in IED/011. In Stage 1, LUC appraise alternative strategic sites that could form part of the Plan's spatial strategy. In Stage 2, they appraise a range of alternative spatial strategies, including various combinations of the strategic sites that survive the Stage 1 appraisal. The NEAs themselves decided which strategic sites were taken forward from Stage 1, and which spatial strategic alternatives were to be appraised at Stage 2, giving their reasons in Appendix 6. In Appendix 8 the NEAs give their reasons for preferring the spatial strategy in the submitted Plan to any of the alternative strategies.

*National policy and guidance*

63. Paragraph 165 of the 2012 NPPF advises that:

A sustainability appraisal which meets the requirements of the European Directive on strategic environmental assessment should be an integral part of the plan preparation process, and should consider all the likely significant effects on the environment, economic and social factors.

64. The PPG defines the role of SA as:

... to promote sustainable development by assessing the extent to which the emerging plan, when judged against reasonable alternatives, will help to achieve relevant environmental, economic and social objectives.

This process is an opportunity to consider ways by which the plan can contribute to improvements in environmental, social and economic conditions, as well as a means of identifying and mitigating any potential adverse effects that the plan might otherwise have. By doing so, it can help make sure that the proposals in the plan are the most appropriate given the reasonable alternatives<sup>15</sup>.

65. The reference to "help[ing] make sure that the proposals in the plan are the most appropriate given the reasonable alternatives" indicates that SA is directly relevant to the assessment of whether the plan meets the "justified" test of soundness. As I noted in paragraph 24 above, in this case the SA (including the ASA) is the principal evidence base document which seeks to show that the Plan meets that test.

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<sup>15</sup> PPG ID Ref 11-001-20140306

*Issues to be considered*

66. In my view the NEAs have met the relevant statutory requirements for consultation on and submission of the SA and ASA reports. In assessing the likely significant effects on the environment of the GC proposals in the Plan and of the reasonable alternatives to them which it identifies, the ASA deals with all the relevant issues identified in Schedule 2 of the SEA Regulations. In combination with the June 2017 SA, it also meets the Schedule 2 requirements to identify the measures envisaged to prevent, reduce and as fully as possible offset any significant effects on the environment of implementing the Plan, to describe the monitoring measures envisaged, and to provide a non-technical summary.
67. The principal issues that require further consideration are:
- whether reasonable alternatives for the Stage 1 and Stage 2 assessments were properly identified, so that no reasonable alternative was excluded from the assessments;
  - whether adequate reasons were given following the Stage 1 assessment for the selection of alternative strategic sites and alternative spatial strategies to be assessed at Stage 2, and for the rejection of other alternatives;
  - whether the assessment, at both Stage 1 and Stage 2, of the likely effects (including cumulative effects) of the Plan's proposals and of the reasonable alternatives were carried out at the same level of detail, and in sufficient depth to enable a proper evaluation to be made;
  - whether the ASA, together with the June 2017 SA, helps to demonstrate that the proposals in the Plan are the most appropriate, given the reasonable alternatives.

*Were reasonable alternatives properly identified?*

68. Reg 12(2)(b) of the SEA Regulations makes it clear that it requires assessment of the likely significant effects of reasonable alternatives taking into account the objectives of the plan. From what is said in the Section 1 Plan about its purpose<sup>16</sup>, it does not have the objective of providing an overarching strategy to govern the distribution of all development across the North Essex area. Consistent with this is the fact that the shared Section 1 Plan has not been prepared as a joint development plan

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<sup>16</sup> See the Introduction to the Plan, in particular para 1.13, and section 3, Spatial Strategy.

document under section 28 of the 2004 Act, as one would expect if it were intended to have the role of a joint spatial strategy.

69. The limited role of the Section 1 Plan is explained further in paragraphs 3.1-3.2 of the reasoned justification to policy SP2 (Spatial Strategy for North Essex):

New homes, jobs, retail and leisure facilities serviced by new and upgraded infrastructure will be accommodated as part of existing settlements according to their scale, sustainability and role, and by the creation of strategic scale new settlements. ... For the majority of settlements these issues are addressed in the second part of the Local Plan dealing with each authority's area.

70. Against this background, in my view it is legitimate for the ASA to confine itself to assessing reasonable options for providing the amount of development which the Section 1 Plan expects the GCs to deliver in the plan period. Policy SP2 makes it clear that this is at least 7,500 dwellings, together with employment development and necessary infrastructure and facilities. That is the relevant objective which the Plan sets for itself. The Plan does not seek to provide, or to set out a strategy for the provision of, all the development needed across the North Essex area. Apart from the GC development proposed in the Plan itself, those tasks are left to the Section 2 plans.
71. Similarly, it is legitimate for the ASA to identify, as reasonable options for the Stage 1 assessment, only strategic sites capable of delivering at least 2,000 dwellings. The relevant Section 1 Plan objective in this context is to identify key strategic growth locations. It is not to identify every possible location for development across North Essex. Given that the largest of the sites proposed for allocation in the Section 2 plans would comprise around 1,700 dwellings, the decision to set a 2,000-dwelling capacity as the cut-off point between strategic and other sites was in my view a reasonable planning judgment, appropriately reflecting the respective roles of the Section 1 and Section 2 plans.
72. 23 alternative strategic sites (including the three GC sites in the Plan) were assessed during the Stage 1 assessment, and most of them were assessed at a range of different sizes. They made up an impressively comprehensive list, and I find no evidence that any strategic site that could have been a reasonable alternative was excluded from it.
73. I consider whether or not reasonable alternatives for the Stage 2 assessment were properly identified as part of the next issue.

*Were adequate reasons given for the selection of alternative strategic sites and alternative spatial strategies to be assessed at Stage 2, and for the rejection of other alternatives?*

74. Appendix 6 to the ASA, which was prepared by the NEAs, sets out how the reasonable spatial strategy alternatives for the Stage 2 assessment were identified, giving reasons for taking forward or discounting the alternative strategic sites assessed at Stage 1. It also describes what each of the spatial strategy alternatives would provide.
75. Over half of the **alternative strategic sites** assessed at Stage 1 were not taken forward into the spatial strategy options assessed at Stage 2, for reasons that are set out in ASA Appendix 6, Table 2. The reasons given in the table make no explicit reference to the Stage 1 ASA. This may reflect the fact that the outcome of the Stage 1c assessment does not show any of the alternative sites to be clearly preferable to the others. Against many of the objectives, all the sites are deemed to have the same or very similar impacts, and for the objectives against which they differ, there is little overall distinction between them when all their positive and negative impacts are taken into account.
76. Instead, broader planning reasons are given for not taking forward the discounted sites from Stage 1. They are summarised in Appendix 6 as follows:
- The main reasons for sites being discounted at this stage relate to either a lack of evidence to suggest there are reasonably deliverable proposals being advanced through the plan-making process at this time, or a lack of evidence to demonstrate that they are reasonable options in practical planning terms. Some sites have been discounted because they overlap or form part of a larger site that is being carried forward into Stage 2 or, following responses to the engagement with site promoters, it has been decided to merge certain sites together.
77. For each of the discounted sites, Table 2 then sets out the NEAs' reasons for not taking it forward into Stage 2. These include concerns about highway capacity and availability of infrastructure and services, impact on landscape character, relationship to existing settlements, and deliverability. It may be that others would have made different planning judgments on some of these points, but nothing I have heard or read indicates that any of the judgments made by the NEAs was unreasonable or irrational. I therefore consider that Table 2 provides adequate reasons for not taking forward the discounted sites.
78. The NEAs' selection of **alternative spatial strategies** to be assessed at Stage 2 was informed by a series of seven principles which they devised in the light of discussions with stakeholders and of my comments in IED/011.

As the NEAs correctly note, attempting to assess every possible combination of every site taken forward into Stage 2 would be an unmanageable task. Devising principles to inform the selection of alternative spatial strategies is, therefore, a reasonable way to proceed, providing of course that the principles themselves are sound.

79. Five of the seven principles are that the alternative strategies should be coherent and logical, and reasonable, that they should test the alternative spatial approaches suggested by me in IED/011, that they should deliver social infrastructure, and that any strategic site included in them should deliver a minimum of 2,000 dwellings in the plan period. In my view, and taking into account my comments above on the reasonableness of the 2,000-dwelling threshold for alternative strategic sites, these principles are sound ones.
80. Principle 1 is entitled "Meet the residual housing need within the plan period". Residual housing need is the gap between the Plan's overall housing requirement for North Essex (43,720 dwellings) and the number of dwellings completed, committed, and planned for in the NEAs' Section 2 Plans. Self-evidently, it is a sound principle that this need should be met.
81. When the Plan was submitted in 2017, residual housing need across North Essex was around 4,700 dwellings. The 7,500 dwellings proposed at the GCs would therefore mean that housing supply over the Plan period would exceed the requirement by about 2,800 dwellings, or around 6% of the overall requirement.
82. By the time the ASA was published in July 2019, residual housing need had been reduced to around 2,000 dwellings<sup>17</sup>, meaning that the 7,500 dwellings proposed at the GCs would generate a surplus in supply of about 5,500, or around 13% above the overall requirement.
83. Despite this, the NEAs still believe it is right to test spatial strategy alternatives with the potential to deliver 7,500 dwellings in the remainder of the Plan period to 2033. In Appendix 6, they justify this by saying that delivery of 7,500 dwellings on strategic sites would provide "a healthy level of over-allocation", thereby ensuring that the Plan's housing requirement would be met even if some of the sites allocated in the Section 2 plans fail to come forward.
84. No evidence appears to have been provided at the time to show why 7,500 dwellings, rather than some lower figure, would produce an appropriate

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<sup>17</sup> See ASA Appendix 6, Table 1. The reduction is apparently due mainly to grants of planning permission on unallocated sites.

level of over-allocation. Moreover, the latest evidence from the NEAs is that, excluding any dwellings proposed in the Section 1 Plan, there is no longer any residual housing requirement for the Plan period<sup>18</sup>. On that basis, the addition of the 7,500 dwellings sought under Principle 1 of the ASA would represent an over-allocation of around 18%, not 13% as was the case when ASA Appendix 6 was drawn up.

85. The ASA's authors cannot be criticised for proceeding on the basis of the figures that were current at the time when it was produced. And, in my view, it is reasonable for the Plan to identify more land than may be needed to meet the NEAs' housing requirements, to help ensure that the requirements are met in the event that some of the expected provision does not come forward. The scale of any such over-allocation is a matter of planning judgment. An over-allocation of 18% against the Plan's overall housing requirement for the period would provide an even healthier level of reassurance than one of 13%. Consequently, I see no reason to find that the ASA is unsound in seeking alternative spatial strategies to deliver at least 7,500 dwellings over the Plan period.
86. Principle 3 is entitled "Reflect relative housing and commuting patterns in any alternative strategy". In explaining the principle, the NEAs say that housing need is greater in the western part of North Essex (the area west of Colchester) than in the eastern part. That is generally borne out by the respective housing requirements of the three NEAs, and by the breakdown of residual housing need across the three NEAs at the time when Appendix 6 was prepared. Differences in commuting relationships<sup>19</sup> and transport links between the areas to the west and east of Colchester also justify considering the two areas separately.
87. It is logical, therefore, that in accordance with Principle 3 alternative strategies were selected to deliver a greater proportion of housing to the west of Colchester than to the east, broadly reflecting the residual requirements which applied in July 2019.
88. Based on the NEAs' seven principles, Appendix 6 identifies 11 alternative spatial strategies for the area to the west of Colchester, and six alternative strategies for the area to the east, giving clear reasons for each. They include strategies to distribute housing growth proportionately to settlements across North Essex, alongside various combinations of the alternative strategic sites taken forward from Stage 1 of the ASA. The alternatives are sufficiently distinct from one another to enable meaningful comparisons to be made.

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<sup>18</sup> See the NEAs' Matter 8 Further Hearing Statement, December 2019, Table 1b. In fact the figures in the table show a small surplus of 377 dwellings.

<sup>19</sup> See EB/018, pp9-11.

89. Taken as a whole, the alternative strategies represent an appropriate range of different ways of delivering the amount of development that is sought, taking appropriate account of my suggestions in IED/011, and I see no basis on which to conclude that any reasonable alternative was excluded from the assessment.

*Was the assessment of the Plan's proposals and the reasonable alternatives carried out at the same level of detail?*

90. Stage 1 of the ASA is scrupulously fair in considering the broad locations for the proposed GCs and the reasonable alternative strategic sites at the same level of detail. The 23 strategic sites are assessed against a common set of criteria which appropriately reflect the Plan's objectives and the full range of considerations relevant to SA, and the results are clearly presented in tabular format. The assessment shows no sign of bias in favour of or against any of the sites.
91. The same applies to the assessment of the 17 alternative spatial strategies considered at Stage 2. I find no evidence that there was a failure to assess potential cumulative effects at either stage.

*Was the assessment of the Plan's proposals and the reasonable alternatives carried out in sufficient depth?*

92. Stage 1 consists of two sequential steps. Stage 1a appraises the location of each of the 23 strategic sites in relation to existing key services, facilities, employment locations, transport links, and environmental assets and constraints without considering what the development itself might deliver. These spatial tests were carried out using a geographical information system.
93. Stage 1c (which replaces a previous Stage 1b) then takes into account how the accessibility of each site to the key services, facilities, employment locations and transport links identified at Stage 1a would be modified by what is likely to be provided by development coming forward on each site, at different scales. In other words, each site was assumed to provide education, community, health and retail facilities, employment space and public transport services in proportion to its size.
94. In assessing what is likely to be provided, account was taken of site-specific information drafted by the NEAs and confirmed with the site promoters and with CAUSE<sup>20</sup>. The Stage 1 assessments in turn informed the assessment

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<sup>20</sup> CAUSE are a group with an alternative Local Plan strategy, known as Metro Town.



of the alternative strategic sites at Stage 2. Provision of rapid transit services was excluded from the Stage 1c assessment, but was taken into account for the relevant spatial strategy alternatives at Stage 2.

95. The ASA was criticised for taking at face value the site-specific information on the forms drafted by the NEAs. But a great deal of additional work would have been required to interrogate that information, for example to ascertain whether or not each of the alternative sites is financially capable of delivering all the facilities attributed to it. Such detailed scrutiny is appropriate when assessing the soundness of a preferred option, but would have been disproportionate at this stage of the SA process. Asking the site promoters and CAUSE to confirm the information drafted by the NEAs ensured that sufficient information for Stage 1c was provided, on an equivalent basis for each site.
96. A broader criticism of the Stage 1 ASA was that its proximity-based approach is too crude, and so fails to make a proper assessment of each alternative site's accessibility to facilities and services, and of its environmental impacts. It is true that at Stage 1a more detailed assessment could have differentiated the quality of facilities and services accessible from each site, for example, the range of employment opportunities or the frequency of public transport. However, that would have made little difference to the outcome of the assessment, since no sites were excluded at Stage 1a. At Stage 1c the provision of facilities and services as part of the development of each site was more decisive in the appraisal of accessibility than proximity to existing facilities.
97. In assessing environmental impacts, however, in most cases a similar (albeit not necessarily identical) proximity-based approach to that used at Stage 1a was employed at Stage 1c. For example, effects on heritage assets are assessed based on whether 5% or more of each site lies within a certain distance of a designated heritage asset. In fact, every site assessed at Stage 1c is deemed to have a "significant negative effect with uncertainty", reflecting the fact that all of them lie within 500m of at least one designated heritage asset.
98. The ASA's approach was criticised by, among others, Historic England, who argue that the lack of detailed evidence on the likely effects of the alternative strategic sites on the **historic environment** has led to over-simplification and inadequate differentiation between them. They consider that a high-level Heritage Impact Assessment [HIA] of each site should have been undertaken to inform the ASA. In the absence of adequate assessment, Historic England say, there can be no confidence that the GC sites proposed in the Plan are capable of accommodating the proposed

number of dwellings without adversely impacting on the historic environment.

99. Historic England also draw attention to the facts that the ASA does not identify (or fully identify) some of the designated heritage assets in and around the proposed GC sites, does not consider the effects of alternative sites on non-designated heritage assets, and uses a distance-based approach contrary to Historic England's published advice<sup>21</sup>.
100. There can be little doubt that a more detailed assessment of the likely effects of the alternative strategic sites on the historic environment would have enabled the ASA to differentiate more clearly between them. But I am not persuaded that the absence of such assessment is a fatal defect in the ASA. This is mainly because the Section 1 Plan does not make specific site allocations for the proposed GCs: instead it identifies broad locations, within which it is intended that the Strategic Growth DPDs will identify specific locations for development. In this context, it appears to me that Historic England's advice on site allocations is more applicable to the future DPDs than to the Section 1 Plan.
101. In taking a proximity-based approach to impacts on heritage assets, the ASA is consistent with the approach it takes to other environmental impacts. Were it to use more detailed evidence to assess impacts on one type of environmental asset, but not the others, this could run the risk of unbalancing the overall assessment. It is unfortunate that the ASA does not identify all the designated heritage assets potentially affected. But had it done so, it is highly unlikely that the outcome of the Stage 1 assessment would have been any different, since all the alternative sites (and indeed all the spatial strategy options assessed at Stage 2) are already deemed to have significant negative effects, with uncertainty, on heritage assets.
102. That said, I share Historic England's concern that, without a detailed Heritage Impact Assessment, there can be no certainty that any of the GCs proposed in the Plan are capable of accommodating the amount of development which the Plan attributes to them, without unacceptable adverse impacts on the historic environment. Given the size of the broad locations proposed for the GCs, I consider it is reasonable at this stage to assume for the purposes of the ASA that they are capable of doing so. But appropriate policy safeguards need to be included in the Plan in the event that, in future, evidence shows this not to be the case. This could be achieved by main modifications to the relevant Plan policies.

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<sup>21</sup> In *The Historic Environment and Site Allocations in Local Plans* – Historic England Advice Note 3

103. On the face of it, it appears surprising that the ASA finds only uncertain minor negative effects on **air quality** for some of the strategic site alternatives, and no significant effects for the majority of the spatial strategy alternatives. However, the ASA advises that without traffic modelling of each strategic site alternative, its assessment needs to be treated with a great deal of caution.
104. While I acknowledge the severe effects of air pollution on human health, I am also mindful of the need for a proportionate approach to gathering evidence for SA<sup>22</sup>. It would be disproportionate to require traffic modelling of each of the 23 strategic site alternatives, and all 17 alternative spatial strategies, when only three strategic sites are actually proposed in the Plan.
105. The ASA appropriately acknowledges the difficulties in compiling the information needed to assess impacts on air quality. Any differences it finds between the alternatives on this issue are so small as to make it highly unlikely that they affect the overall outcome of the assessment. For these reasons I consider that the ASA's approach to the issue is adequate at this stage.
106. The ASA finds no significant effects on **water quality** in respect of any of the strategic sites assessed, while acknowledging a degree of uncertainty given that not all scales of growth for all the sites have been covered in the Water Cycle Studies and because specific waste water infrastructure requirements will only be finalised at planning application stage. Those are reasonable findings at this stage of planning, taking into account that, with main modifications, Plan policies are capable of requiring adequate water supply and waste water treatment capacity to be provided before any dwellings are occupied.
107. At Appendix 5, paragraph 3.1173, the ASA says that the potential **noise effects** from Stansted airport flight-paths on future residents of the proposed West of Braintree GC are judged to be negligible. However, based on the assessment of the potential effects of operations at the adjacent Andrewsfield airfield, the Stage 1c scoring chart for the West of Braintree GC site [NEAGC1] shows an overall "uncertain minor negative effect" score against the noise nuisance criterion.
108. Taking into account all the evidence before me, including noise contour plans supplied by the airport operator, evidence on the number of flights passing over the West of Braintree site at 7,000 ft or lower, and existing and emerging Government guidance on aircraft noise, I consider that even if a finding of "negligible effect" from Stansted airport flight-paths on

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<sup>22</sup> See PPG Ref ID 11-009-20140306

NEAGC1 is not within the range of reasonable planning judgment, a finding of “uncertain minor negative effect” would be. Moreover, I note that in summarising and concluding on the findings of the Stage 1c assessment on noise pollution, the ASA makes no distinction between sites with minor negative effects (uncertain or otherwise) and those with negligible effects. Therefore, it appears that even if the finding of “negligible effect” is unjustified in respect of the noise effects of Stansted flight-paths, it has not materially affected the ASA’s conclusions.

109. The ASA is justified in finding that, since the West of Braintree GC as proposed in the submitted Plan does not overlap with the Andrewsfield airfield site, development of the former would not directly lead to loss of flight operation facilities, community facilities, or historic assets forming part of the latter. The impact on Andrewsfield of the West of Braintree proposal in the former emerging Uttlesford Local Plan is not a matter for this examination.

110. Taking all the above points into account, I conclude that the assessment of the Plan’s proposals and of the reasonable alternatives was carried out in sufficient depth to enable a proper evaluation to be made.

*Does the ASA help to demonstrate that the proposals in the Plan are the most appropriate, given the reasonable alternatives?*

111. From the ASA, LUC conclude that the spatial strategies that rely solely on proportionate growth at existing settlements are the poorest performing, but that for the others, the differences are much more finely balanced. They say that it is therefore not possible to come to a definitive conclusion that any one strategy, whether west of Colchester or east of Colchester, is the most sustainable option. The advantage of the strategy in the submitted Section 1 Plan, according to LUC, is that it provides clear direction to accommodate strategic development over many decades to come, and therefore more certainty in terms of coherence and investment. However, some of the alternatives offer opportunities to deliver similar benefits.

112. In my view it is reasonable to draw those conclusions from the ASA.

113. In Appendix 8 to the ASA the NEAs set out their reasons for proceeding with the spatial strategy in the submitted Plan, that is to say, the three proposed GCs, rather than any of the alternatives. They say that

a number of sites and spatial strategy options perform similarly against the sustainability objectives, but nothing arises from the [ASA] to suggest that the

spatial strategy in the submitted Plan is wrong or that there are any obviously stronger-performing alternatives ...

114. To the west of Colchester, the NEAs say, the proposed West of Braintree and Colchester / Braintree Borders GCs have the genuine advantages of providing for long-term strategic growth. West of Braintree has direct access to the A120 and the proposed rapid transit system [RTS], and is well-located to Stansted airport which is a centre of employment and provides opportunities for new business growth. Colchester / Braintree Borders is close to Marks Tey station which has regular services to London, Colchester and beyond, is well located at the intersection of the A12 and A120 with good opportunities for integration with other transport modes, including the RTS, and has opportunities for sustainable travel into Colchester which is a regional centre for employment and has major health, shopping and cultural facilities.
115. To the east of Colchester, the NEAs consider that the Tendring / Colchester Borders GC offers benefits to Colchester and Tendring in terms of housing delivery, improved accessibility through rapid transit and the A120/A133 link road, and unlocking the economic potential for expansion of the University of Essex and the Knowledge Gateway.
116. It is clear from this that, apart from any specific locational advantages, many of the benefits which the NEAs ascribe to the proposed GCs depend on the delivery of strategic transport infrastructure, for example the RTS and the A120/A133 link road. Similarly, the advantages which the proposed GCs offer in providing for long-term strategic growth would only be realised if the GCs are actually capable of being delivered over the long term. Accordingly, deliverability is critical to the justification of the Plan's spatial strategy, including the proposed GCs. I consider the issue of deliverability in the next section.

## **Deliverability of the proposed GCs**

### ***Infrastructure needed to support the proposed GCs***

#### *Trunk road improvements*

117. In IED/011 I said that “greater certainty over the funding and alignment of the A120 dualling scheme and the feasibility of realigning the widened A12 at Marks Tey is necessary to demonstrate that the GC proposals are deliverable in full”.

118. Since June 2018 trunk road schemes in North Essex have moved forward as follows:

- A preferred route for the A120 dualling scheme has been established, and development work on the scheme is included in the Department for Transport’s Roads Infrastructure Strategy 2 [RIS2] for 2020-25.
- This means that the scheme is in the “pipeline” for RIS3 (2025-30), but currently there is no commitment to the construction of the scheme. The RIS2 document says

New proposals need to consider a wide range of impacts: not only what can be promised with certainty, but also where a proposal has the potential to support wider and more ambitious local plans for development. ... We also expect that where a proposal enables significant development nearby, the developer will contribute to the cost of delivering the scheme. There is also potential for funding from other sources to support a developing proposal. Funding contributions will make a significant difference to the likelihood of government choosing to bring forward a proposal to the next stage, and ultimately to commit it as part of the next RIS.

- Widening of the A12 between junctions 19 and 25 is included in the RIS2 programme.
- The Spring 2020 Budget statement announced a £272M grant from the Housing Infrastructure Fund. According to the Treasury’s East of England Factsheet, this funding “will be used to realign the eastern section of the A12 between Junctions 24 and 25 in order to unlock up to 20,931 homes as part of the North Essex Garden Community”. In late 2019 Highways England consulted on alternative options for the realignment, the aim of which is to overcome the severance effect on the Colchester / Braintree Borders GC of the A12’s existing alignment.

119. The publication of RIS2 and the Spring 2020 budget mean that it is now reasonable to assume that the A12 widening scheme will go ahead,

including the realignment between junctions 24 and 25, with a good prospect of completion by Highways England's expected date of 2028.

120. On the other hand, notwithstanding its inclusion in the RIS3 pipeline, there is still no certainty on whether or not the A120 dualling scheme will go ahead. However, the fact that it would support development at two of the three proposed GCs, and that contributions towards it are expected from the GC developers, are strong factors in its favour. If funding for the scheme is confirmed, there is a good prospect that it will also be completed by 2028.
121. The implications for the two GCs to the west of Colchester are as follows.
122. Both Highways England and ECC consider that completion of the A120 dualling scheme is necessary to support the full build-out of 10,000 dwellings at the West of Braintree GC<sup>23</sup>. However, partial build-out in advance of the A120 scheme could be achieved without severe detriment to the road network, when account is taken of other committed road improvements, including those to M11 junction 8, the A131 between Braintree and Chelmsford, and the A120 / B1018 junction at Braintree.
123. At the Matter 6 hearing session, the NEAs' representative indicated that at least 2,000 dwellings could come forward at the West of Braintree GC in advance of the A120 scheme, but that the scheme would become necessary at some point between the completion of 2,000 and 10,000 dwellings. I do not read ECC's application to the National Productivity Investment Fund for funding for road improvements at Braintree as contradicting that view.
124. Promoters of the West of Braintree GC contend on the basis of census data that only a small proportion of journey-to-work trips to and from the West of Braintree GC would use the A120 to the east of Braintree, and consequently that the feasibility and deliverability of the GC does not rely on delivery of the A120 dualling scheme. However, in the absence of detailed modelling to support that conclusion, I give more weight to the views of Highways England and the local highway authority.
125. Taking into account likely future improvements to M11 junction 8, I see no reason to consider that development at the proposed West of Braintree GC would be constrained by capacity issues on the A120 to the west.
126. Turning to the Colchester / Braintree Borders GC, there is no substantial evidence to contradict the NEAs' position that completion of both the A12

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<sup>23</sup> While submitted Plan policies SP7 & SP10 propose an overall total of between 7,000 and 10,000 dwellings, the NEAs' viability appraisal assumes a total of 10,000.

widening scheme, including one of the alternative route options between junctions 24 and 25, and of the A120 dualling scheme are needed to support the full build-out of 21,000 dwellings at the GC<sup>24</sup>.

127. Consequently, notwithstanding the decision to proceed with the A12 widening as part of RIS2, full build-out of the Colchester / Braintree Borders GC is dependent on confirmation of funding for the A120 scheme.
128. The promoters of the Colchester / Braintree Borders GC say that their technical evidence demonstrates that it would be possible to build up to about 2,500 dwellings without the need for either the A12 widening or the A120 dualling scheme. However, a 2,500-dwelling development at Colchester / Braintree Borders would be very different from the GC proposal in the Plan. If funding for the A120 scheme were to be confirmed, it might in principle be appropriate to allow some development to proceed before the A12 and A120 schemes are complete. But for the reasons given in paragraphs 28 and 116 above, it would be entirely inappropriate to find that the proposed GC is deliverable if the available infrastructure would allow only a small fraction of it to be built.

#### *A120-A133 link road*

129. ECC have secured £65 million [M] from the Housing Infrastructure Fund [HIF] to build a dual-carriageway link road between the A120 and A133 to the east of Colchester<sup>25</sup>. The cost breakdown provided by ECC [in EXD/082] indicates that £65M would cover all the costs of the road and would include a contingency allowance of around 21%. Other participants provided alternative costings, but I have no reason to consider that the figures prepared by the local highway authority, ECC, which were subject to scrutiny through the HIF bid process, are unreasonable. Having said that, a contingency allowance of 21% appears low at this stage of planning, especially when compared with the 44% contingency allowance which ECC considered appropriate for the RTS (see below).
130. ECC undertook consultation on route options in Autumn 2019. Each route option is located towards the eastern edge of the broad location for the proposed Tendring / Colchester Borders GC. They vary in the extent to which they impinge on the potential development areas within the broad location. While at least one of the options appears likely to have a significant severance effect within the broad location, the range of options

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<sup>24</sup> Full build-out at Colchester / Braintree Borders is now considered by the NEAs to comprise 21,000 dwellings, and viability appraisal has been carried out on that basis, notwithstanding that submitted Plan policies SP7 & SP9 propose a total of between 15,000 and 24,000 dwellings.

<sup>25</sup> The HIF funding also includes £35M for Route 1 of the RTS: see below.



available means that there is the opportunity to minimise any such effect. However, it will also be important to ensure that there is adequate access, including for pedestrians and cyclists, from the proposed GC across the link road into the countryside to the east. It is unclear to what extent that requirement has been taken into account in the costings.

131. The A12 widening scheme, discussed above, would provide capacity for the additional traffic on the A12 resulting from the provision of the link road. Funding for complementary local road improvements, including to the Greenstead roundabout in Colchester, would be sought from the developers of the Tendring / Colchester Borders GC. An allowance for that funding is made in the NEAs' viability assessment. The NEAs consider that, in combination, all the proposed road improvements would provide adequate mitigation for the impacts of traffic from the GC. I concur with that view. That is not to say, however, that increased congestion will not occur when all sources of traffic growth, including from the proposed GC, are taken into account.

#### *Rapid transit system*

132. Plan policy SP7 requires the new communities to be planned around a "step change" in integrated and sustainable transport systems. To fulfil that requirement, it is necessary for it to be shown that high-quality public transport services linking each of the proposed GCs to key destinations are capable of being provided. Without that, the GCs would not comply with NPPF's advice that the transport system needs to be balanced in favour of sustainable transport modes, giving people a real choice over how they travel<sup>26</sup>. Moreover, in order to meet that advice and the Plan's policy aspirations, the service must be available from early on in the life of the GCs, both to provide transport for residents without a car, and to influence the travel choices of residents with cars.
133. The NEAs' intention is that the RTS will be the primary public transport service for the proposed GCs. Since June 2018 planning for the RTS has continued, and in July 2019 ECC and their consultants published their report *Rapid Transit System For North Essex – From vision to plan* [EB/079] [hereafter, "Vision to Plan"]. The report firms up a number of issues that had been left open in the previous RTS report<sup>27</sup> which I considered in 2018:
- For the foreseeable future, the RTS will use high-quality buses. The options of using trams or guided buses have been discarded. The possibility of trackless trams (a technology currently on trial in China)

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<sup>26</sup> 2012 NPPF, para 29

<sup>27</sup> The *North Essex Rapid Transit Study* [EB/066]

being used at an undefined point in the future is contemplated, but the Plan does not rely on this.

- Four RTS routes have been devised, respectively linking the Tendring / Colchester Borders GC to Colchester town centre and the Park and Ride site north of Colchester (Route 1); linking the Colchester / Braintree Borders GC to Colchester town centre and providing connections to Route 1 (Route 2); linking the West of Braintree GC eastwards to Braintree and westwards to Stansted airport (Route 3); and linking Colchester / Braintree Borders GC to Braintree, thereby joining up Routes 2 & 3 (Route 4).
- Options for the four routes have been developed, identifying alternative alignments for, and the degree of segregation of, each route section.
- Capital costs and passenger and revenue forecasts for each route have been developed, and proposed timescales for the introduction of each route have been established.
- Capital funding for RTS Route 1 has been secured from the Housing Infrastructure Fund.

134. Notwithstanding concerns expressed about the feasibility of some of the proposed alignments and their effects (including on other road users, on-street parking and residential amenity), I consider that the route section options have been worked up in sufficient detail to demonstrate that a bus-based RTS with priority over other traffic for much of its length could, in principle, be provided along the routes proposed in Vision to Plan. However, important questions remain about three central aspects of the RTS proposals, which I consider in turn below.

135. **Capital cost estimates** were developed for each RTS route for both “lower-investment” and “higher-investment” scenarios, using standard assumptions based on section lengths and degree of segregation from other traffic. For Routes 1, 2 & 3, Table 5-1 in Vision to Plan shows that the lower-investment scenario produces RTS end-to-end journey times between 26% and 37% longer than journey times in the higher-investment scenario. Section 5.5 of Vision to Plan comments that the greater capital investment in the higher-investment scenario would deliver higher patronage, higher revenue, lower operating costs, and higher mode shares for RTS both on and off the GCs, compared with the lower-investment option.

136. I agree with that analysis. Even in the higher-investment scenario, it is by no means clear that the forecast end-to-end journey times for the RTS

routes would offer any significant advantage over car journey times in current peak traffic conditions, while in current off-peak conditions the car would almost certainly be quicker for many journeys. In the lower-investment scenario, it is likely that the RTS would be considerably slower than the car for most if not all journeys, at all times of day. In this context, I consider that only in the higher-investment scenario would the RTS have any prospect of meeting Plan policy SP5's aspiration for sustainable modes of transport that can compete effectively with private vehicles, and of giving people a real choice over how they travel, as the NPPF advises.

137. Vision to Plan gives higher- and lower-bound capital costs for the higher-investment scenario, with the lower bound representing the base cost and the higher bound representing the base cost plus a 44% contingency allowance. When benchmarking the capital costs of the RTS routes against two similar schemes elsewhere, Vision to Plan used the midpoint between the lower and higher bounds. The corrected table in the NEAs' post-hearing note [EXD/082] indicates that, for the higher-investment scenario, those midpoint costs are comparable with the £4.6M/km out-turn costs for the Bristol Metrobus scheme, but significantly lower than the £5.5M/km out-turn costs for the Leigh-Salford busway.
138. This benchmarking exercise does not present the full picture, however, because Vision to Plan's out-turn costs for the comparator schemes do not allow for inflation since those schemes were completed, meaning that they do not provide a like-for-like comparison at current cost levels. Credible figures based on an assumed civil engineering inflation figure of 3.5% per annum produce inflation-adjusted out-turn costs of £5.3M/km for Bristol and £6.6M/km for Leigh-Salford, both substantially higher than the midpoint costs of the North Essex higher-investment scenario.
139. In hearing statements reference was made by way of comparison to other RTS schemes, including Fastrack in Kent, Fastway in Sussex and the Belfast Glider system. In some cases these indicate higher per-km costs than for the comparator schemes in Vision to Plan, and other cases lower costs. Taken as whole, these references indicate that the inflation-adjusted out-turn costs of the comparator schemes used in Vision to Plan provide a reasonable sense-check for the RTS cost estimates.
140. Moreover, the costs given for the RTS schemes do not include the cost of structures such as a bridge over the railway at the Colchester / Braintree Borders GC, or the cost of any necessary land acquisition.
141. All these points lead me to the view that the capital costs given for the RTS in Vision to Plan need to be treated with caution. At the very least, the upper-bound costs for the higher-investment scenario should be used in

carrying out viability assessment. Those upper-bound costs, rather than the mid-point costs, represent a realistic comparison with the inflation-adjusted costs of the comparator schemes used in Vision to Plan<sup>28</sup>. Even then, it may well be that for Routes 2 and 3 they underestimate the likely capital cost of the RTS, given that they exclude the costs of structures and land acquisition, and I have no clear evidence on what proportions of the comparator scheme out-turn costs relate to structures and land acquisition.

142. Somewhat different considerations apply to Route 1, since the capital costs for that route were subject to further refinement during the preparation of ECC's HIF bid. As a result, I have a reasonable degree of confidence that the upper bound of the higher-investment scenario is likely to reflect the full capital cost of Route 1.
143. As regards **timing of provision**, Vision to Plan envisages that the RTS routes will be developed on a phased basis. That is a realistic approach, given the scale of the project and the fact that the timing of expected development varies at each GC.
144. However, although Table 5-6 in Vision to Plan indicates that RTS Route 4 will be developed between 2034 and 2051, no capital funding for Route 4 is identified in the NEAs' viability appraisals, and there is no specific evidence that it is available from other sources. Consequently, it has not been shown that Route 4 is deliverable.
145. **Commercial viability** is considered in sections 5.2 to 5.4 of Vision to Plan. Section 5.3 makes generally reasonable assumptions about operating costs, including service frequencies and leasing costs for high-quality vehicles to operate the services.
146. Section 5.2 derives revenue estimates for each route, based on demand forecasts which in turn are based on the outputs from a multi-modal transport model. It is likely that a more refined model using more up-to-date survey data would have produced more accurate results. Nonetheless, I consider that the method used has produced demand forecasts that are adequate for the purposes of demonstrating commercial viability at this stage of planning for the RTS.
147. However, I have concerns about the assumptions on the level of investment in the RTS which inform the revenue estimates. As the NEAs' response to my clarification question 3 in EXD/075 makes clear, in section 5.2 the "higher-investment" revenue forecasts for 2033 are based on an

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<sup>28</sup> Per-km upper-bound costs for the higher-investment scenario are given in EXD/082, Table 2.

“aspirational” level of capital spending: only the “lower-investment” forecasts reflect the expected level of investment by 2033.

148. The NEAs go on to say in EXD/075 that “the extent of investment in Routes 1, 2 and 3 is likely to lie between those two levels”. But no clear evidence is given to support that statement. It would be imprudent to rely, for example, on the prospect of Government grant funding without specific evidence that it is likely to be forthcoming.
149. Of greater concern is that the revenue forecasts for Route 3 are based on the assumption that a significant proportion of demand will come from proposed developments in the former emerging Uttlesford Local Plan: the Easton Park GC and the part of West of Braintree GC in Uttlesford district<sup>29</sup>. For the reasons given in paragraphs 18-20 above, this is not a reliable assumption. As a result, I can have no confidence that Route 3 is deliverable.
150. In section 5.4.1, Vision to Plan makes it clear that an element of “pump-priming” should be assumed to be necessary, both to support the RTS services when they are first introduced, and to subsidise traditional bus services at the very early stage of GC development. Although a modest annual allowance is made for “investment in early phase public transport” in the NEAs’ viability appraisals for each of the GCs, I have seen no clear evidence that it is sufficient to meet those purposes.
151. Drawing all these points together, I find that there is sufficient evidence to demonstrate that construction of the RTS is physically feasible. However, it has not been demonstrated that Routes 3 and 4 are deliverable in financial terms. It may well be that even the upper-bound estimates in Vision to Plan’s higher-investment scenario underestimate the likely capital costs of Routes 2, 3 and 4, and there is some uncertainty over the revenue forecasts for Routes 1 and 2. There is no clear evidence to show that the NEAs’ viability appraisals make adequate provision for “pump-priming”.
152. I consider the consequences of these findings in the section on viability below.

#### *Marks Tey station*

153. The NEAs have investigated the possibility of relocating Marks Tey railway station to a more central position in the proposed Colchester / Braintree Borders GC. However, Network Rail advised them in July 2019 that, in

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<sup>29</sup> See EXD/089.

view of the very high costs that would be involved in relocating the station, enhanced access and improvements to the existing station should be explored and developed. An appropriate allowance for this purpose has been made in the viability appraisal for the GC.

*Water supply and waste water infrastructure*

154. The North Essex Integrated Water Management Strategy follows a staged approach to planning for water supply and waste water treatment for the proposed GCs. The existing Stage 1 identifies a series of options, which would then be refined in Stage 2 to determine specific solutions for each GC. This is a conventional approach and I see no reason to consider that it is inappropriate here.

155. In a statement of common ground, the NEAs, Anglian Water and the Environment Agency agree that modifications to Plan policies are needed to require the necessary water supply and waste water treatment capacity to be provided before any dwellings are occupied at the proposed GCs. However, in order to show that the proposed GCs are deliverable, it is also necessary to establish whether or not that provision is capable of being funded.

156. There are statutory responsibilities on the water supply companies (Anglian Water and Affinity Water) to plan to meet future growth in demand, and on Anglian Water to provide waste water treatment capacity. Allocations are made in the NEAs' viability assessment to fund connecting infrastructure at each of the proposed GCs. However, those allocations are inevitably subject to a degree of uncertainty given that specific solutions have yet to be identified. I consider the consequences of this in the section on viability below.

**Deliverability of the proposed GCs**

***Housing build-out rates***

157. In IED/011 I reviewed the evidence then before me on housing build-out rates and concluded that, while it is not impossible that one or more of the GCs could deliver at rates of around 300 dwellings per annum [dpa], it would be more prudent to plan, and carry out viability appraisal, on the basis of an annual average of 250dpa.

158. The NEAs subsequently prepared the topic paper *Build out rates in the Garden Communities*, July 2019 [EB/082], which concludes that adopting that 250dpa figure would be overly cautious based on the evidence

available and the context and attributes of the Garden Communities themselves. In the NEAs' view, what they regard as an achievable, albeit conservative, build-out rate of 300dpa is appropriate for the purposes of modelling, although they consider that this figure could be substantially increased over time.

159. From the literature review of other reports on build-out rates, EB/082 identifies a number of factors which promote higher delivery rates. These include the size of the development (bigger sites tend to achieve higher delivery rates), the ability to diversify the type, size and tenure of the dwellings provided, and the strength of the local housing market. I agree that all these factors would tend to promote higher delivery rates at the proposed GCs.
160. An important section of EB/082 focusses on the NLP report *Start to Finish* (November 2016), which I considered in IED/011. *Start to Finish* is the most comprehensive study of actual, achieved build-out rates available to me. It found that the 10 greenfield sites providing more than 2,000 dwellings that were studied delivered around 170dpa on average, with substantial variation around that mean figure.
161. EB/082 points out that the delivery periods for most of the sites studied in *Start to Finish* include the period of deep economic recession which began in 2007/08. The recession led to a steep decline in housebuilding nationally from which it took several years for significant recovery to begin. It is reasonable to infer that the average build-out rates identified in *Start to Finish* might have been affected by these events, which went well beyond the normal fluctuations of the business cycle.
162. However, NLP have carried out further analysis of build-out rates excluding the five years from 2008 to 2013, thereby effectively excluding the effects of the recession. (It is reasonable to regard fluctuations outside this exceptional period as typical of the normal business cycle.) NLP's analysis showed that the average build-out rate on the same 10 greenfield sites of 2,000 dwellings or more was 184dpa. That is still well below the 250dpa rate which I recommended in IED/011 as a prudent basis for planning, let alone the 300dpa rate which the NEAs now regard as a conservative figure.
163. NLP also analysed the pre-recession period. Only two greenfield sites of more than 2,000 dwellings were available to inform that analysis: too small a sample from which to draw any reliable conclusions. For all sites of 500 dwellings or more, however, the average pre-recession delivery rate was 116dpa, compared with 109dpa for the whole period including the recession and post-recession.

164. NLP's further analysis, therefore, demonstrates that while the recession and its aftermath had some effect on build-out rates, the effect was not that great. Average build-out rates on comparable sites increase only a little if the effects of the recession are excluded.
165. The Homes & Communities Agency [HCA] *Notes on Build out rates from Strategic Sites*, which is also referenced in EB/082, claims that "forecast trajectories for the very largest sites (say 4,000 units+) may be in the range of 300-500[dpa]". However, the evidential basis for this claim is unclear, despite the fact that the report is based on actual build-out rates. Only one of the four developments of 4,000 dwellings or more for which average figures are given achieved an average delivery rate of more than 300dpa (in fact, 321dpa), with the other three ranging between 205dpa and 281dpa.
166. The HCA report also gives average actual build-out figures for eight developments of between 2,000 and 4,000 dwellings. According to those figures, only one of the eight achieved an average delivery rate of more than 300dpa. The next highest figure was 234dpa, while at the other end of the scale, four delivered less than 100dpa on average. Taking all this into account, I consider that the findings of the HCA report do not contradict those of the more recent NLP analysis, nor do they support an average delivery rate of 300dpa at the proposed GCs.
167. EB/082 also includes a table taken from the Letwin *Independent Review of Build Out* (June / October 2018), showing average build-out rates on 15 sites ranging between 572 and 86 dpa. However, unlike *Start to Finish*, these averages combine actual and forecast delivery rates. Examination of the detailed annual delivery figures for 12 of those 15 sites<sup>30</sup> shows that there are more than twice as many years for which forecast rates are given, than years for which actual build-out rates are given.
168. Three of those 12 sites are high-density brownfield developments in London, very different in character from the proposed GCs. On the other nine, there were more than twice as many years in which actual delivery levels fell below 250dpa, than years in which they exceeded 300dpa. Even after allowing for some inaccuracy in the Letwin figures, for example at the Great Kneighton site, they show that, for the relevant sites studied, build-out rates of 250dpa or less have been achieved considerably less often than rates of 300dpa or more.

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<sup>30</sup> The Letwin *Independent Review of Build Out Rates, Draft Analysis* (June 2018), pp AX38-AX49. Letwin does not provide annual delivery figures for the other three sites.



169. EB/082 suggests that the three sites on the Bicester ring road which were assessed by Letwin should be viewed as phases of a single, larger development for the purposes of calculating build-out rates. But only two of those sites are close to one another: the other is on the opposite side of the town. Moreover, I have no clear evidence on the extent to which the three sites have delivered housing simultaneously, and the only one for which actual delivery figures are given by Letwin has achieved an average rate of only about 140dpa.
170. The two adjacent sites in Colchester referenced in EB/082 have delivered some 260-270dpa, but over a period of only two years. Examples of other developments given by other participants, including at Chelmsford, Aylesbury and Didcot, provide no clear evidence that average delivery rates of more than 250dpa can be sustained over a long period. Nor is there any robust evidence before me to demonstrate that the use of modern methods of construction significantly boosts delivery rates.
171. EB/082 draws on examples of build-out rates at other strategic-scale developments in Milton Keynes, at Otterpool Park in Kent and at Harlow and Gilston Garden Town. Most of these are expected to achieve build-out rates of 300dpa or more, and in some cases considerably more. However, almost all those figures are future projections rather than actual build-out rates. The Milton Keynes projections, which were endorsed by the Local Plan Inspector, extend only over the next 10 years, in contrast to the much longer timescales of the proposed GCs.
172. This is not to suggest that projected delivery figures on sites elsewhere should be disregarded when assessing the likely rate of delivery at the proposed GCs. But in my view they carry considerably less weight than evidence of actual achieved delivery, when considering the GCs' delivery prospects and their financial viability. It would be unwise to embark on these very long-term projects on the basis of delivery assumptions that have not been shown to be achievable in practice.
173. EB/082 draws attention to the significantly higher average housing delivery rate in Milton Keynes achieved by the Development Corporation [MKDC] from 1971 to 1992, compared with the average rate since its dissolution. But, given the very different social, economic and institutional arrangements prevailing at that time, it would be misleading to assume that the past achievements of MKDC and other development corporations would be replicated at the proposed GCs. Nor is there yet any clear evidence that the Ebbsfleet Development Corporation, established by the government in 2015, will be successful in achieving the high delivery rates projected for it.

174. In conclusion, evidence shows that some large housing sites are capable of delivering 300 dwellings or more in a single year, and in some cases for a number of years in succession. But I find that there is no evidence to support the view that the proposed GC sites are capable of delivering at that annual level consistently, throughout the normal peaks and troughs of the business cycle, over the decades that it will take to build them. Over that timescale, the best evidence on likely delivery rates at the proposed GCs remains *Start to Finish's* annual average figure (adjusted to exclude the effects of the 2007/08 recession) of under 200dpa for greenfield sites of more than 2,000 dwellings.
175. It is appropriate to adjust that figure upwards to 250dpa to take account of the fact that the GCs meet most of the factors identified in EB/082 which promote higher delivery rates. But it would be imprudent to base the Plan's housing trajectory, or the viability appraisal of the proposed GCs, on any higher figure.

### ***Lead-in times***

176. None of the evidence I have seen or heard since June 2018 leads me to alter my view, set out with reasons in IED/011, that, in general terms, it is reasonable to assume that the planning approval process would allow housing delivery at any GC to start within four or five years from the adoption date of the plan (or plan revision) which establishes the GC in principle. The NEAs' latest housing trajectory [EXD/070], which shows housing delivery at the Tendring / Colchester Borders and West of Braintree GCs beginning in 2024, is broadly consistent with this finding, albeit that the trajectory will need to be kept under review.
177. However, I advised in IED/011 that the four- to five-year timescale could alter depending on how long it takes to put the necessary infrastructure in place. In this context the NEAs' trajectory now anticipates that delivery of housing at the Colchester / Braintree Borders GC will start in 2029, after completion of the A12 widening and A120 dualling schemes (assuming the latter is included in RIS3).

### ***Employment provision***

178. Policy SP7(vi) requires that each proposed GC should provide and promote opportunities for employment within each new community and within sustainable commuting distance of it. In that context I observed in

IED/011 that it is surprising that the GC policies contain no specific figures for the amount of employment land or floorspace to be provided at each of the GCs. I acknowledged the difficulty of predicting requirements for employment land and floorspace at this early stage of planning, but advised that indicative requirement figures could be set which could then be reviewed each time the Plan itself is reviewed.

179. In response, the NEAs commissioned Cebr to produce the report *Employment provision for the North Essex Garden Communities* [EB/081]. It sets out estimates of employment floorspace and employment land requirements for each GC. At my request, Cebr subsequently provided adjusted requirement figures for the West of Braintree GC that are commensurate with the GC land within Braintree district only<sup>31</sup>.
180. EB/081 forecasts employment numbers at each GC for three future dates – 2033, 2050 and at completion of construction, estimates the breakdown of those numbers by employment sector, and then follows HCA guidance on employment densities to convert them into floorspace and finally employment land requirements. In principle this is a sound methodology, as long as the forecasts of employment numbers and the sectoral breakdown estimates are themselves sound.
181. The employment number forecasts are based on two scenarios, which produce almost identical results. In the “reference case” scenario, total employment at each GC is assumed to be exactly equal to the number of completed dwellings at each forecast date. This is a highly ambitious assumption, which exceeds both the requirements of policy SP7(ii) and the more demanding goal of the NEGC Charter’s Principle 3 to provide access to one job per household within each new GC or within a short distance by public transport.
182. The “investment case” scenario draws on work in an earlier report by Cebr, *Economic Vision and Strategy for the North Essex Sub-Region* (August 2018), commissioned by NEGC Ltd. In this scenario, the employment-to-population ratio in North Essex as a whole (including at each GC) gradually increases so that by 2036 it converges on the ratio for a set of comparator areas, and remains constant thereafter.
183. The comparator areas are all located in what Cebr describe as an “arc of prosperity” to the north, west and south-west of London. Both employment-to-population ratio and GVA per capita in North Essex are currently well below the average for the comparator areas. Cebr’s investment case scenario therefore essentially depends on the success of

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<sup>31</sup> For the reasons given in paras 18 to 20 above

an ambitious economic development programme to raise North Essex's economic performance to match that of the comparator areas.

184. Cebr's projected employment figures for the GCs are similar to, and indeed in some cases somewhat lower than, those in the upper end of the range estimated in a report by Cambridge Econometrics and SQW: *North Essex Garden Communities Employment & Demographic Studies* [EB/009], published in April 2017. Having said that, EB/009's upper-end estimates are based on similarly ambitious assumptions as regards economic development, and I was shown no evidence of any development programmes that have achieved that degree of improvement in economic performance.
185. Economic forecasting is notoriously difficult, and especially so over the long development timescales of the proposed GCs. The ambitions for economic growth that inform the Cebr forecasts may or may not be realised in practice. But in my view it would be wrong, particularly at this early planning stage, to constrain the potential for achieving that level of growth by limiting the availability of employment land. Consequently, I consider that it would be appropriate to use the figures in EB/081<sup>32</sup> as the basis for setting employment land requirements for the GCs in the Plan, with the proviso that the requirements for all the GCs are reviewed each time the Plan and/or the Strategic Growth DPDs are reviewed, to ensure that they continue to reflect up-to-date evidence.
186. In reaching that view I have had regard to the representations about the way in which Cebr arrived at their sectoral breakdown of the employment numbers for each GC. While in most cases the sectoral shares at the GCs reflect those for the comparator areas, there are a few apparent anomalies, most notably the 30% share for information and communication activities forecast for the Tendring / Colchester Borders GC. But any such anomalies have only a small effect on the calculation of the overall employment land requirements for each GC.

### ***Delivery mechanisms***

187. The NEAs' intention is that the Plan should be "delivery model-blind": that is to say, it should make no specific requirements about whether development of the proposed GCs is led by the public sector, the private sector, or a partnership between the two. In principle that is a sound

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<sup>32</sup> Subject to the West of Braintree adjustment discussed above.

position which allows for appropriate flexibility at this early stage of planning the GCs.

188. In IED/011 I advised that submitted Plan policy SP7 should be modified to remove the reference to “sharing risk and reward”. That does not mean that I consider it would be unlawful for the public and private sectors voluntarily to enter into an arrangement in which they would share the risks and rewards of development. However, for the reasons I gave in IED/011, it would be inappropriate and potentially unlawful to make that a policy requirement.
189. The *North Essex Garden Communities Charter* envisages that Local Delivery Vehicle(s) [LDVs], accountable to the NEAs with both private and public sector representation, will be responsible for leading the delivery of the proposed GCs. Three LDVs, together with a holding company known as NEGC Ltd, have been incorporated in readiness to perform this role. Subsequently, in response to consultation on the *New Towns Act 1981 [Local Authority Oversight] Regulations*, the NEAs indicated an interest in the formation of a locally-led new town development corporation, overseen by the NEAs, to perform the lead role.
190. At the hearings the NEAs explained that the LDVs (or a future locally-led development corporation) are in effect being held in reserve to lead the delivery of the GCs, should it become apparent through the planning application process that the private sector is unable to do so in accordance with the Plan’s policies.
191. The role of the Plan is to set out policies and criteria to guide the further planning of the proposed GCs, and to provide part of the framework against which planning applications to develop the GCs would be assessed. Provided that there is evidence that the GC proposals are justified and are capable of being delivered, it is not necessary for the Plan to specify that any particular delivery model must be followed.

## ***Viability***

### *National policy and guidance*

192. At paragraph 173 the 2012 NPPF advises that, to ensure viability, the costs of any requirements likely to be applied to development should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing landowner and willing developer. It also cautions that the sites and scale of development in the plan should not be subject to such a scale of policy obligations and policy burdens that their ability to be developed viably is threatened.
193. The PPG on viability makes it clear that understanding Local Plan viability is critical to the overall assessment of deliverability. The plan's vision for the area should be presented in the context of local economic conditions and market realities. This should not undermine ambition for high-quality design and wider social and environmental benefit, but such ambition should be tested against the realistic likelihood of delivery. Viability assessment should not compromise the quality of development but should ensure that the vision and policies are realistic and provide high-level assurance that plan policies are viable<sup>33</sup>.
194. As has been seen in the foregoing sections, the GC proposals in the Plan are predicated on their meeting policy requirements which reflect garden city principles. In this way the Plan seeks to achieve sustainable development in accordance with national planning policy<sup>34</sup>. The ASA – which provides the principal justification for the inclusion of the GCs in the Plan's spatial strategy – is based on the assumption that the Plan's policy requirements for the facilities and infrastructure needed to support them will be met. Demonstrating that the GCs can be viably delivered in accordance with the Plan's policies is, therefore, critical to establishing their overall deliverability.
195. The PPG also advises that there is no single approach for assessing viability, and sets out a number of principles that viability assessments should follow, including evidence-based judgment, collaboration, transparency and consistency. Plan-makers should not plan to the margin of viability, but instead should allow for a buffer to respond to changing markets and to avoid the need for frequent plan updating<sup>35</sup>.

### *Viability assessments produced for the examination*

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<sup>33</sup> PPG Ref ID 10-001-20140306 & 10-005-20140306

<sup>34</sup> See paras 12-13 above.

<sup>35</sup> PPG Ref ID 10-002-20140306, 10-004-20140306 & 10-008-20140306

196. When I conducted the 2018 examination hearings the most recent assessment of the GCs' financial viability before me was the April 2017 Viability Assessment by Hyas ["the 2017 Report"]. In IED/011 I found that it had not demonstrated that the GCs proposed in the submitted Plan were financially viable, and I made a number of points about how any future viability assessment should be carried out.

197. The NEAs commissioned Hyas to carry out further viability work on the GCs, which is reported in the Viability Assessment Update (June 2019, EB/086) ["the 2019 Update"]. This report drew on further work by AECOM and Gleeds [EB/087 & EB/088] to define, and provide phasing and costs for, the infrastructure needed to support the GCs.

198. At my request, Hyas then carried out additional work to take account of two factors:

- Unlike the 2017 Report, the 2019 Update assessed the West of Braintree GC as a cross-boundary site, including land in Uttlesford district. For the reasons given in paragraphs 18-20 above, however, it cannot be assumed that the Uttlesford land would form part of the GC. It was therefore necessary for Hyas to revise their assessment of the West of Braintree GC to exclude the land in Uttlesford district.
- Despite my findings on build-out rates in IED/011, the 2019 Update assessed all three GCs on the basis that they would deliver 300 dwellings a year [dpa] on average. I therefore asked for further appraisals of all three GCs assuming average delivery of 250dpa.

Hyas's additional work forms Supplementary Information to their 2019 Update (November 2019, EXD/058) ["the 2019 Supplementary Information"].

199. The NEAs now rely principally on the 2019 Update and Supplementary Information to demonstrate the viability of the proposed GCs. Separate viability assessments were submitted by NEGC Ltd, and by promoters of the Colchester / Braintree Borders and West of Braintree GCs. Below I consider, first, the 2019 Update and Supplementary Information, and then the other viability appraisals.

200. In considering the appraisals, I am mindful of the PPG's advice that evidence should be proportionate and should demonstrate viability in a broad sense<sup>36</sup>. While the PPG also calls for greater detail when assessing

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<sup>36</sup> PPG ID Ref 10-005-20140306

strategic sites (such as the GCs) which require high infrastructure investment, at this early stage of planning many costs and values cannot be known exactly. What is important is not that the appraisals achieve an unrealistically high degree of precision or certainty, but that they provide a robust indication that the proposed GCs are capable of being viably delivered.

*Competitive return to a willing landowner*

201. The PPG advises that a competitive return for the landowner is the price at which a reasonable landowner would be willing to sell their land for the development. The price will need to provide an incentive for the landowner to sell in comparison with the other options available, which may include its current use value or its value for a realistic alternative use<sup>37</sup>. Most of the land in each proposed GC's area is currently in agricultural use, with a current use value of around £10,000/acre.
202. Many participants suggested that a price of around £100,000/acre is the minimum needed to provide a competitive return. They included promoters of two of the three GC sites and others with knowledge of the local land market. While there is only limited evidence to support that figure, it appears likely that it is indicative of current market expectations. Care needs to be taken not to base viability assessment on a land price which is too far below such expectations, if landowners are to be persuaded to sell.
203. On the other hand, as a RICS research document<sup>38</sup> points out, basing land values on comparable evidence without adjustment to reflect policy requirements can lead to developers overpaying for land. This may in turn compromise the achievement of the policy requirements, if the developer then seeks to recover the overpayment by seeking a reduction in their planning obligations.
204. Taking these points and the other relevant evidence into account, there seems little doubt that a land price of around £100,000/acre on any of the proposed GC sites would provide sufficient incentive for a landowner to sell. In my view, it is also reasonable to assume that a price below £100,000/acre could be capable of providing a competitive return to a willing landowner, when account is taken of the necessarily substantial requirements of the Plan's policies.
205. In the absence of clear local evidence, it is difficult to estimate the minimum land price that would constitute a competitive return. The price

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<sup>37</sup> PPG ID Ref 10-015-20140306

<sup>38</sup> RICS, *Financial Viability Appraisal in Planning Decisions: Theory and Practice*, April 2015



achieved for development land in other places and in other circumstances is unlikely to provide a reliable guide. In my judgment, however, it is extremely doubtful that, for the proposed GCs, a land price below £50,000/acre – half the figure that appears likely to reflect current market expectations – would provide a sufficient incentive to a landowner. The margin of viability is therefore likely to lie somewhere between a price of £50,000 and £100,000 per acre.

*Hyas's 2019 Update and Supplementary Information*

206. Like Hyas's 2017 Report, the 2019 Update follows the residual valuation method. Its methodology is similar to that of the 2017 Report, but with a number of changes to the inputs and assumptions. It presents summaries and cashflows for three different scenarios:

- Reference scenario (no grant, no inflation) – all three GCs;
- Grant scenario (including HIF grant) – Colchester / Braintree Borders and Tendring / Colchester Borders GCs;
- Inflation scenario – all three GCs.

207. Each of these scenarios was subject to sensitivity testing of contingency allowances at 10%, 20% and 40% on certain infrastructure items. The Supplementary Information is presented for the same ranges of scenarios and contingency allowances as the 2019 Update.

*Land purchase*

208. The 2019 Update and Supplementary Information make appropriate allowances for the cost of interest on land purchase. These were omitted from the 2017 Report.

209. The assumption is made that the land for the GCs is purchased in tranches throughout the development period, each tranche being purchased two years before it is required for development. This is a necessarily simplified assumption for the purposes of viability appraisal, and it may well be that the actual pattern of land purchases is more irregular than this. Nonetheless, the assumption is justified by the evidence that phased draw-down of land is common practice in large-scale development schemes.

210. Accordingly, it is appropriate for the 2019 Update and Supplementary Information to assume that land payments are staged throughout the development period. In the Reference and Grant scenarios those payments are set at current values, consistent with the approach taken to all other costs and returns. I consider the Inflation scenarios separately below.

*Infrastructure costs*

211. I consider that the base infrastructure costs (exclusive of contingency allowances) that are used in the 2019 Update and Supplementary Information are generally appropriate, except in the case of the RTS.
212. For the reasons given above in my consideration of the RTS, I consider that at the very least the upper-bound costs of the higher-investment scenario in the RTS Vision to Plan document should be used for the purposes of viability assessment. Even those upper-bound costs may well underestimate the likely capital cost of RTS Routes 2, 3 and 4. However, the 2019 Update and Supplementary Information take the lower-bound costs of the higher-investment scenario as the base costs for the RTS, to which contingency allowances of 10%, 20% or 40% are applied, as discussed below.
213. The upper-bound costs for the RTS in Vision to Plan are 44% higher than the lower-bound costs. Consequently, the base costs allowed for the RTS in the 2019 Update and Supplementary Information fall a long way short of the minimum that I consider appropriate, even after taking account of the fact that the costs in Vision to Plan include a 10% allowance for professional fees.

*Contingency allowances*

214. In the 2019 Update and Supplementary Information's 10% contingency scenarios, a 10% contingency allowance applies to all infrastructure items. In the 20% and 40% contingency scenarios, the higher contingency allowance is applied only to the base costs of those infrastructure items in the Scheme Wide Other Itemised category (transport and utilities), with the contingency allowance on the other items remaining at 10%. This approach appropriately reflects the fact that it is the items in that category which are most likely to be subject to unknown additional costs.
215. In considering what is an appropriate level of contingency allowance, it is necessary to recognise that the Section 1 Plan represents the initial stage of planning for the proposed GCs, setting out broad parameters and high-level infrastructure requirements for them. The exact amount of development that each GC will contain, and the precise nature and scale of its infrastructure requirements, will be established through Strategic Growth DPDs and masterplans which have yet to be drawn up.
216. In general terms, the level of contingency allowance that is appropriate varies according to the stage of planning that a development project has reached. Costs are likely to be underestimated (a phenomenon known as

“optimism bias”) if an adequate allowance for contingencies is not made at each stage. In the early stages, when the project is less well-defined and there is greater uncertainty over the factors influencing the eventual outturn costs, a higher level of contingency allowance is usually appropriate. As planning progresses and uncertainties reduce, the level of contingency allowance may be reduced accordingly.

217. The Treasury’s *Supplementary Green Book Guidance* on optimism bias (April 2013) advises that an upper-bound optimism bias allowance of 44% for capital expenditure on standard civil engineering projects provides a first starting point and reasonable benchmark. It reflects the average historic optimism bias which research found to occur at the outline business case stage.
218. While the Green Book guidance specifically applies to public-sector commissions, in my view similar considerations apply at the stage of planning that the GCs have reached. At this early stage, and particularly when account is taken of their large scale and very long build periods, it is inevitable that many uncertainties remain over the infrastructure requirements of the proposed GCs. As discussed above<sup>39</sup>, for example, decisions have yet to be made on which of the options for water supply and waste water treatment will be pursued at each GC. Nor has there been any significant analysis of the risks to infrastructure delivery.
219. Moreover, as I have set out above, the base costs allowed for the RTS in the 2019 Update and Supplementary Information fall well below the minimum figure I consider necessary. Adding a 40% contingency allowance to the base costs for the RTS would only bring it up to around that minimum figure, with no significant margin for any additional costs that may well arise, such as for structures or land acquisition. The RTS costs represent a substantial proportion of the costs in the Scheme Wide Other Itemised Infrastructure category.
220. For all these reasons, I consider that at this stage of planning it would be reasonable to expect a contingency allowance of at least 40% to be applied to the items in the Scheme Wide Other Itemised category. Any lower figure would, in my view, provide insufficient reassurance that all the necessary infrastructure requirements of the proposed GCs would be met.

#### *Rate of housing delivery*

221. In the light of my conclusions on build-out rates in paragraphs 157-175 above, I consider that viability appraisal of the proposed GCs should be

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<sup>39</sup> At paras 106 and 154-156

carried out on the basis of an average annual housing delivery rate of 250dpa. Basing the appraisal on a higher average rate would not provide a reliable indication of viability.

*Interest on strategic investment borrowing*

222. As in 2017, the 2019 Update and Supplementary Information assume that all borrowing for land purchase and infrastructure provision is funded at an interest rate of 6%. In my experience this is a fairly common assumption in local plan viability assessments. Having had regard to all the relevant submissions and evidence, I consider there is a good prospect that a master-developer for the proposed GCs would be able to obtain finance at that rate. The NEAs are confident that this would not give rise to any issue of state aid compliance. The state aid complaint that was submitted to the European Commission in February 2020 concerns other aspects of Government funding for the GCs and its outcome is not yet known.

*Grant scenarios*

223. The Grant scenarios in the 2019 Update and Supplementary Information assume that HIF grants are available to fund transport infrastructure for two of the three proposed GCs: the A120/A133 link road and RTS Route 1 for Tendring / Colchester Borders GC, and the A12 realignment between junctions 24 and 25 for the Colchester / Braintree Borders GC. Both HIF grants have now been confirmed.

*Inflation scenarios*

224. The 2017 Hyas Report made no allowance for inflation in its modelling, and in IED/011 I endorsed that approach. However, the 2019 Update and Supplementary Information include Inflation scenarios for all three GCs.

225. The assumptions made by Hyas in modelling the Inflation scenarios are that building costs and property sale values increase at an annual rate of 4%, while strategic infrastructure costs increase at 3.5% annually. This produces a small additional margin year-on-year, but over the GCs' long development periods it results in dramatic increases in residual land values [RLVs], up to 10 or even 20 times the RLVs in the corresponding non-inflation scenarios.

226. The PPG advises that current costs and values should be considered when assessing the viability of plan policy. Policies should be deliverable and should not be based on an expectation of future rises in values for at least the first five years of the plan period. This will help to ensure realism and

avoid complicating the assessment with uncertain judgments about the future<sup>40</sup>.

227. The Harman Report *Viability Testing Local Plans*<sup>41</sup>, while not Government policy, also provides helpful advice on this topic. It says that the most straightforward way to assess plan policies for the first five years is to work on the basis of current costs and values, and that

for the period beyond the first five years (ie. the 6-15 year period) a more flexible approach may be taken, recognising the impact of economic cycles and policy changes over time. Forecasting things like house prices or costs is notoriously difficult over the shorter term, and subject to wider inaccuracies over the medium and longer term. The best a council can realistically seek to do is to make some very cautious and transparent assumptions with sensitivity testing of the robustness of those assumptions.

228. Neither the PPG nor the Harman Report consider the approach to assessing viability beyond 15 years. But the latter's advice about the uncertainty and difficulty of forecasting in the 6- to 15-year period applies with even greater force to attempts to forecast price and cost changes over the much longer timeframes of the proposed GC developments. Hyas themselves acknowledge in the Update that there are difficulties inherent in forecasting, especially over such long timeframes, and that there are no potential references or market projections published over such long-term periods.

229. Even if the average annual growth in house prices over the last 20 years is significantly greater than the 4% rate assumed in the Inflation scenarios, that is no guarantee that an average 4% growth rate will be sustained throughout the decades that it would take to build the proposed GCs. Similar uncertainty applies to changes in building and infrastructure costs. Notwithstanding these substantial uncertainties, Hyas did not carry out sensitivity testing of different potential inflation rates as recommended by Harman.

230. For all these reasons, I consider that the Inflation scenarios do not provide a reliable indication of the viability of the proposed GCs.

#### *Conclusions on the 2019 Update and Supplementary Information*

231. For the above reasons, I consider that the Inflation scenarios, the scenarios based on average housing delivery of 300dpa, and the scenarios for the proposed West of Braintree GC including land in Uttlesford district do not

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<sup>40</sup> PPG Ref ID 10-008-20140306

<sup>41</sup> Produced by the Local Housing Delivery Group, June 2012

provide a reliable indication of the viability of the proposed GCs. It is appropriate to consider the viability of the proposed Tendring / Colchester Borders and Colchester / Braintree Borders GCs based on the Grant scenarios, since their associated HIF grants have been confirmed. The Reference scenario is the appropriate basis for considering the proposed West of Braintree GC. Based on my findings above on contingency allowances, in each of these scenarios a contingency allowance of at least 40% needs to be applied to all the items in the Scheme Wide Other Itemised category

232. As noted above, the 2019 Update and Supplementary Information follows the residual valuation method, in which all the costs of development are subtracted from the value of the development in order to arrive at a residual land value. The costs of development include the infrastructure requirements for the GCs, which (in accordance with national policy) appropriately reflect the garden city principles that underpin them. In order to demonstrate the viability of each proposed GC, the residual land value produced by the appropriate assessment scenario must achieve a competitive return to a willing landowner that is above the margin of viability<sup>42</sup>. Should this not be achieved, the viability of the GC will not have been demonstrated.
233. For the proposed Tendring / Colchester Borders GC, the Grant scenario assessment in the 2019 Supplementary Information, based on average delivery of 250dpa with a 40% contingency allowance, gives a residual land value of over £175,000/acre. That is well above the figure that I consider would constitute a competitive return to a willing landowner. This would allow sufficient financial headroom to overcome any concerns about the contingency allowance for the A120/A133 link road, or any additional costs associated with the link road or with RTS Route 1. I therefore consider that the viability of the Tendring / Colchester Borders GC has been demonstrated.
234. For the Colchester / Braintree Borders GC, on the other hand, the Grant scenario assessment, based on average delivery of 250dpa with a 40% contingency allowance, gives a residual land value of only around £24,500/acre. That is well below what I consider to be a competitive return to a willing landowner.
235. For the West of Braintree GC, the Reference scenario, based on delivery of 250dpa with a 40% contingency allowance, produces a residual land value of around £52,000/acre. I consider that this would place the development below or, at best, at the margin of viability.

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<sup>42</sup> PPG ID Ref 10-015-20140306 & 10-008-20140306

*The NEGC viability assessment*

236. The viability appraisal submitted by NEGC Ltd covers all three GCs. Unlike the Hyas assessments and those carried out by site promoters, it is not a residual valuation. Instead the price of land at each GC is an input to the appraisal, and the output is a figure for the rate of return on capital invested. In each case the land price was calculated on the assumption that the land and rights required are to be compulsorily acquired.
237. The per-acre land values used in the appraisal are around £24,000 for the West of Braintree GC, £26,000 for the Colchester / Braintree Borders GC, and £39,000 for the Tendring / Colchester Borders GC. In each case this is well below what I consider to be a competitive return to a willing landowner and accordingly it appears unlikely that land could be purchased by agreement at that price.
238. Compulsory purchase order [CPO] powers are available to the NEAs as local planning authorities, and would also be available to a locally-led new town development corporation, should the NEAs establish one. In either case, one of the matters which the Secretary of State is required to take into account when deciding whether to confirm a CPO is whether the purpose for which the land is being acquired could be achieved by any other means. This may include considering the appropriateness of any alternative development proposals put forward by the owners of the land, or any other persons<sup>43</sup>.
239. In a situation where there are landowners and developers prepared to develop each of the GC sites, it appears likely that any proposed CPO would be contested, with the potential for considerable delay and uncertainty, and with no guarantee as to the outcome.
240. In the NEGC appraisal, interest rates are assumed to be 2.5% for land purchase and 3.5% for infrastructure borrowing, well below the 6% rate assumed by Hyas. A statement from Homes England indicates that in recent years they have made £2,500M worth of infrastructure loans at similar rates to developers in order to unlock or accelerate the delivery of large-scale housing projects. However, the loan rate is dependent on the potential borrower satisfying certain defined criteria for creditworthiness and collateralisation. I have no clear evidence that those criteria are capable of being satisfied in such a way as to justify a loan rate of 3.5% for each of the GCs.

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<sup>43</sup> MHCLG, *Guidance on Compulsory purchase process and The Crichel Down Rules* (July 2019), paras 106 & 143

241. Even if the issues of land purchase and interest rates could be resolved, the NEGC viability appraisals also assume average housing delivery at each of the proposed GCs at rates of 300dpa and 500dpa. I consider these to be unsound assumptions, for the reasons set out above.
242. Moreover, while the NEGC appraisals use infrastructure base costs derived from the same source as Hyas (EB/087), they apply a 44% optimism bias allowance to some transport and utility items, but only 10% to others. For the West of Braintree GC nine items<sup>44</sup> receive a 44% allowance, for Colchester / Braintree Borders GC three items, and for Tendring / Colchester Borders one item. No explicit rationale for these distinctions is provided, and it is at odds with my finding that it a 40% contingency allowance should be applied to all the items in the Scheme Wide Other Infrastructure category.
243. In the light of these points, I consider that the NEGC appraisals do not provide a reliable indication of the viability of each of the proposed GCs.

*The viability assessments submitted by the GC site promoters*

244. Some of the assessments submitted by promoters of the GC sites assume average housing delivery rates of 300dpa or above throughout the GCs' development period. For the reasons given above, I consider that reliance cannot be placed on viability assessment based on that assumption.
245. Two viability assessments were, however, provided for average delivery rates of 250dpa. The assessment for the Andrewsfield New Settlement Consortium [ANSC] is for a development including some 8,300 dwellings on land in Braintree district within the broad location of the proposed West of Braintree GC. It includes infrastructure costs based on a per-dwelling figure of around £53,200. There is no detailed explanation of how that figure was arrived at. But when explaining the £51,000 per-dwelling figure used in their earlier appraisal (based on average delivery of 300dpa), the authors of the assessment say that they consider the Hyas infrastructure allowance of £53,000 per dwelling, informed by the Gleeds costs estimates [EB/087] to be reasonable.
246. The Hyas allowance of £53,000 per dwelling was for a 12,500-dwelling scheme including land in Uttlesford district. When assessing a 10,000-dwelling scheme wholly within Braintree district as proposed in the Plan, Hyas used a figure of £57,000 per dwelling, significantly higher than the circa £53,000 figure in the ANSC assessment. Since the Hyas scheme is

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<sup>44</sup> Counting the various phases of the RTS off-site network as one item.



also some 1,700 dwellings larger, this means that its total infrastructure allowance, excluding contingencies, is £570M, as against around £442M for the ANSC scheme.

247. While some of this discrepancy can be explained by infrastructure costs (such as education and community facilities) which vary on a per-dwelling basis, there are also substantial fixed costs, including for transport infrastructure such as the RTS. Without a breakdown of how the ANSC infrastructure allowance was arrived at, it seems likely that it is an underestimate.
248. Of even greater concern is that in the ANSC assessment, infrastructure spending is assumed to occur at a constant annual rate throughout the GC's five-decade build programme. That is an unrealistic assumption, at odds with the phasing in EB/087, which more realistically allocates 100% of many of the large transport and utility infrastructure costs to the first one or two phases of the build programme.
249. In addition, the ANSC assessment applies a contingency rate of 10% to all infrastructure costs. In my view that is wholly inadequate for transport and utility infrastructure, for the reasons discussed above.
250. The other viability assessment said to be based on delivery of 250dpa was prepared for the promoters of the larger part of the Colchester / Braintree Borders GC [CBBGC]. It is for a scheme including 17,000 dwellings and includes a per-dwelling infrastructure cost similar that used in the Hyas Grant scenario. (The Grant scenario is the appropriate comparison because it excludes the cost of the A12 realignment, which is unnecessary for the CBBGC promoters' 17,000-dwelling scheme).
251. In the CBBGC assessment the first dwellings are assumed to be delivered in 2023. At an average rate of 250dpa, a 17,000-dwelling scheme should take 68 years to deliver. However, the submitted spreadsheets [EXD/085] appear to show the last dwellings completed in 2079, some 11 or 12 years early. The reason seems to be that, whereas for most of the build period delivery is shown as taking place at the rate of 20 dwellings per month (240dpa), for several years in the middle of the build period a rate of 40 dwellings per month (480dpa) is shown. It is not clear, therefore, that the assessment is in fact based on average delivery of 250dpa as intended.
252. Like the ANSC assessment, the CBBGC appraisal also applies a wholly inadequate 10% contingency rate to transport and utility costs. There is no clear evidence that the 27.5% profit rate which they apply would provide a sufficient safeguard against the substantial uncertainties over those costs at this early stage of planning.

253. The CBBGC appraisal also assumes a housing sale price of £351/sq ft, 5% higher than the price of £334/sq ft (based on their analysis of actual market values) in the earlier CBBGC appraisal based on delivery of 354dpa. This increase is explained by the suggestion that the reduced supply of homes to the market would result in increased sales values. But no substantial evidence was provided to support that suggestion, and I consider it unlikely that a reduction in delivery of around 100dpa at one development would have such an effect, when account is taken of all the other development that is proposed to come forward in the housing market area.
254. In the light of these points, I consider that the assessments submitted by promoters of the GC sites do not provide a reliable indication of the viability of the proposed West of Braintree GC or Colchester / Braintree Borders GC.

### Conclusions on soundness

255. The ASA is unable to conclude that any of the spatial strategy options, to the west or east of Colchester, is the most sustainable option. It says that the advantage of the strategy in the submitted Section 1 Plan is that it provides clear direction to accommodate strategic development over many decades to come. For the NEAs, the ability of the proposed GCs to provide for long-term strategic growth is one of the key reasons for pursuing the Section 1 Plan strategy in preference to the alternatives, notwithstanding that the ASA finds that some of the alternative options offer opportunities to deliver similar benefits.
256. Consequently, the Plan's spatial strategy, which includes the three proposed GCs, would only be justified as the most appropriate strategy if it can be shown that each GC is deliverable, not just over the Plan period but over the long term. And in order to meet both the NPPF's guidance on infrastructure provision and the Plan's policy requirements, which in accordance with national policy reflect garden city principles, the infrastructure necessary to support the GC's development must also be shown to be deliverable. An assessment of deliverability is also central to the question of whether or not the Plan is effective.
257. Viability appraisal shows that, with an appropriate 40% contingency allowance on transport and utilities infrastructure, the proposed **Colchester / Braintree Borders GC** would not achieve a viable land price, and that the proposed **West of Braintree GC** is below, or at best is at the very margin of, financial viability, contrary to advice in the PPG. On this basis, neither GC is deliverable.

258. For separate reasons, given in paras 143-151 above, neither RTS Route 3 nor RTS Route 4 has been shown to be deliverable. The proposed West of Braintree GC depends on Route 3 for its public transport links to destinations outside the GC, and on Route 4 for links to places east of Braintree. Without those routes, apart from the few journeys that might be possible on foot or bicycle, the car would be the only realistic choice for travel beyond the GC itself.
259. Housing development at the proposed Colchester / Braintree Borders GC is intended to help meet the housing needs of both Colchester borough and Braintree district, and there is a strong commuting relationship between the two local authority areas. Notwithstanding the links to other destinations offered by RTS Route 2 and by rail services from Marks Tey station, the GC would depend on Route 4 for its public transport links westwards to Braintree.
260. In these circumstances, the fact that RTS Routes 3 and 4 have not been shown to be deliverable is entirely at odds with the Plan's aspirations for integrated and sustainable transport networks. Even if the A120 dualling scheme has a good prospect of being delivered as part of the RIS3 programme, not to provide the necessary public transport connections from these two GCs would directly conflict with the NPPF's advice that the transport system needs to be balanced in favour of sustainable transport modes.
261. For the foregoing reasons, therefore, I find that the proposed Colchester / Braintree Borders and West of Braintree GCs are not justified or deliverable. Consequently, the Plan's spatial strategy, and thus the Plan itself as submitted, are unsound.
262. On the other hand, the financial viability of the proposed **Tendring / Colchester Borders GC** is very strong. With an appropriate 40% contingency allowance on transport and utilities infrastructure, it would enable a competitive land price to be paid, while leaving substantial headroom to meet any additional costs that might arise. This provides assurance that the necessary infrastructure, including RTS Route 1, the A120/A133 link road and local highway improvements, are deliverable in the time-frame necessary to support the GC's development. The evidence therefore shows that the GC is deliverable over its lifetime.
263. The broad location for the proposed Tendring / Colchester Borders GC is close to Colchester, the largest town in North Essex, to which it would be connected by RTS Route 1. The GC would have access to the wide range of employment, retail, leisure, healthcare and other facilities in Colchester, in

addition to those that would be provided within the GC itself, and to employment opportunities at the adjacent University of Essex and Knowledge Gateway. Tendring district has a very strong commuting relationship with Colchester, and weaker relationships with Braintree and other destinations to the west of Colchester. As a result, the accessibility of the proposed GC is not critically dependent on the delivery of the other RTS routes.

264. Based on the NEAs' current housing trajectory, and taking into account my conclusions on the rate of housing delivery, the Tendring / Colchester Borders GC would deliver over 2,000 dwellings during the Plan period. That would make a worthwhile contribution to meeting the Plan's overall housing requirement. Based on the latest housing supply figures<sup>45</sup>, it would represent an over-allocation of approximately 5% against the overall requirement. Whether that level of over-allocation is sufficient, and whether the other sources of housing supply will come forward as the NEAs expect, are matters to be considered in the Section 2 plan examinations.
265. As I have discussed above, the ASA made separate assessments of alternative spatial strategies for the areas to the west and east of Colchester. For the above reasons, I consider that the evidence supports the NEAs' view that the proposed Tendring / Colchester Borders GC is the most appropriate of the alternative spatial strategies for the area to the east of Colchester.
266. I therefore conclude that development of the Tendring / Colchester Borders GC would enable the delivery of sustainable development in accordance with the NPPF's policies. If the unsound Colchester / Braintree Borders and West of Braintree GC proposals are removed from the Plan, the Plan is capable of being made sound.

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<sup>45</sup> See para 84 above.

## **Advice on the way forward**

267. In the light of this conclusion it appears to me that the NEAs have two main options:

- To propose and consult on main modifications to remove the Colchester / Braintree Borders and West of Braintree GC proposals from the Plan; or
- To withdraw the Plan from examination.

268. If the NEAs wish to pursue the first option, they will need to make a formal request under Section 20(7C) of the 2004 Act, asking me to recommend main modifications that would make the Plan sound and legally-compliant. A schedule of proposed main modifications, based on the list of suggested amendments drafted by the NEAs [EB/091B] would then need to be agreed between myself and the NEAs.

269. As well as modifications to remove the two GC proposals from the Plan, the schedule would contain more detailed modifications to other Plan policies that I consider are likely to be necessary in the light of the representations on the Plan and the discussion at the hearing sessions. Some of these have been discussed above. The main modifications would need to be the subject of full public consultation for a minimum of six weeks, and I would need to consider all the responses to the consultation before producing my report and recommendations.

270. Should the NEAs decide to pursue the first option, they will also need to consider whether it is necessary for further SA and/or SEA work to be carried out and consulted upon. The PPG advises:

It is up to the plan-making body to decide whether the sustainability appraisal report should be amended following proposed changes to an emerging plan ... If the plan-making body assesses that necessary changes are significant, and were not previously subject to sustainability appraisal, then further sustainability appraisal may be required and the sustainability report should be updated and amended accordingly<sup>46</sup>.

271. In deciding which option to pursue, the NEAs may wish to bear in mind that it is possible that the responses to public consultation on the main modifications may give rise to the need for further hearing sessions. On this point, the Planning Inspectorate's *Procedure Guide for Local Plan Examinations* advises at paragraph 6.9:

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<sup>46</sup> PPG Ref ID 11-023-20140306

## Appendix 1

The Inspector will consider all the representations made on the proposed MMs before finalising the examination report and the schedule of recommended MMs. Further hearing sessions will not usually be held, unless the Inspector considers them essential to deal with substantial issues raised in the representations, or to ensure fairness.

272. In addition, if the official 2018-based household projections are published while the examination is still in progress, consideration will need to be given to any implications the projections may have for the soundness of the housing requirement figures in the Plan.
273. For these reasons, at present it is not possible to give a clear indication of when my report and recommendations on the Plan are likely to be produced, should the NEAs decide to pursue the first option.
274. Apart from my request at paragraph 7 above for a response from the NEAs to EXD/091, I am not inviting comments on the contents of this letter. I will, however, assist with any queries the NEAs may have.
275. It would be helpful if you would let me know, as soon as you are able to, which of the options outlined in paragraph 267 above (or any alternative course of action) the NEAs wish to pursue. This will enable a timescale for the remainder of the examination to be developed, should the NEAs wish to pursue the first option. Please contact me through the Programme Officer.

Yours sincerely

*Roger Clews*

Inspector



# Proposed Main Modifications to the Publication Draft Braintree, Colchester and Tendring Local Plans Section One

July 2020

Ref	Policy / Para N°	<b>Proposed main modification</b>  <b>Bold text</b> indicates a proposed addition to the text of the publication draft plan <del>Struck-through text</del> indicates a proposed deletion from the text of the publication draft plan <i>Italic text</i> indicates other proposed modifications to the publication draft plan	<b>Indicative reason(s) for proposed main modification</b>
<b>MM1</b>	Vision for North Essex	<p>North Essex will be an area of significant growth over the period to 2033 and beyond, embracing positively the need to build well-designed new homes, create jobs and improve and develop infrastructure for the benefit of existing and new communities.</p> <p><b>It will continue to be an attractive and vibrant area in which to live and work, making the most of its rich heritage, town centres, natural environment, coastal resorts, excellent educational facilities and strategic transport links which provide access to the ports, Stansted Airport, London and beyond. Rural and urban communities will be encouraged to thrive and prosper and will be supported by adequate community Infrastructure. (Mod A)</b></p> <p>Sustainable development principles will be at the core of the strategic area's response to its growth needs, balancing social, economic and environmental issues. Green and blue infrastructure and new and expanded education and healthcare facilities <b>enabling healthy and active lifestyles (Mod B)</b> will be planned and provided along with other facilities to support the development of substantial new growth; while the <del>undeveloped</del> countryside <b>(Mod C)</b> and <del>heritage assets</del> <b>the natural and historic environment</b> will be <del>protected</del> <b>conserved</b> and enhanced. <b>(Mod D)</b> <b>Key to delivering sustainable development is that new development will address the requirement to protect and enhance be informed by an understanding of the historic environment and settlement character. (Mod E)</b></p> <p>At the heart of our strategic vision for North Essex <del>are</del> <b>is a new garden communities, to be sensitively integrated within the existing historic built and natural environment, the delivery of which is and</b> based on Garden City principles <del>covered by policy SP7. (Mod F)</del></p> <p>The garden communities <b>provides an opportunity to create the right balance of jobs, housing and Infrastructure in the right location and (Mod G)</b> will attract</p>	<p><b>Positively-prepared, Justified, Effective</b></p> <p><b>Mod A</b> – Highlight the strategic issues relevant to Section 1.</p> <p><b>Mod B</b> – Include high level strategic objective on the need to support healthy and active lifestyles.</p> <p><b>Mod C</b> – To clarify definition of countryside to be protected.</p> <p><b>Mod D</b> – Include high level strategic objective on the need to preserve and enhance the natural and historic environment.</p> <p><b>Mod E</b> – Include high level strategic objective on the need to</p>



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		<p>residents and businesses who value innovation, community cohesion and a high-quality environment, and who will be provided with opportunities to take an active role in managing the garden community to ensure its continuing success.</p> <p>Residents will live in high quality, innovatively designed, <del>contemporary</del> homes, <b>(Mod H)</b> accommodating a variety of needs and aspirations, located in well-designed neighbourhoods where they can meet their day-to-day needs. There will be a network of tree-lined streets and green spaces, incorporating and enhancing existing landscape features and also accommodating safe and attractive routes and space for sustainable drainage solutions; and leisure and recreation opportunities for both residents and visitors of the garden communityies.</p> <p>Suitable models for the long term stewardship of community assets will be established and funded to provide long term management and governance of assets. All Garden City principles as specified in the North Essex Garden Communities Charter will be positively embraced including, <b>where appropriate</b>, new approaches to delivery and partnership working and <del>sharing of risk and reward</del> for the benefit of the new communityies. <b>Central to this will be the comprehensive planning and development of the garden community, and the aligned delivery of homes and supporting infrastructure. (Mod I)</b></p>	<p>preserve and enhance the historic environment.</p> <p><b>Mod F</b> – To clarify that in addition to Garden City principles, the garden community will have regard to integration with the existing environment.</p> <p><b>Mod G</b> – To clarify the role of the garden community in meeting planning objectives.</p> <p><b>Mod H</b> – Requirement for homes to be ‘contemporary’ is not justified by evidence.</p> <p><b>Mod I</b> – To clarify the approach to planning the garden community.</p>

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MM2	Para 1.31, Strategic Objectives	<p>Providing New and Improved Transport &amp; Communication Infrastructure – to make efficient use of existing transport infrastructure and to ensure sustainable transport opportunities are promoted in all new development <b>to support new and existing communities. (Mod A)</b> Where additional capacity is required in the form of new or upgraded transport infrastructure to support new development, ensuring that this is delivered in a phased &amp; timely way to minimise the impact of new development. To ensure that enabled communication is provided as part of new developments as enabled communication is essential for modern living, and broadband infrastructure and related services will be essential for business, education and residential properties.</p> <p>Ensuring High Quality Outcomes – to promote greater ambition in planning and delivering high-quality sustainable new communities. Overall, new development must secure high standards of urban design and green infrastructure which create attractive and sustainable places where people want to live and spend time. <b>New development needs to be informed by an understanding of the historic environment resource gained through the preparation of Historic Impact Assessments, and to conserve and enhance the significance of the heritage assets and their settings. (Mod B)</b></p>	<p><b>Justified, Effective</b></p> <p><b>Mod A</b> – To clarify that new transport infrastructure will benefit both new and existing communities</p> <p><b>Mod B</b> – To clarify requirement to conserve and enhance the historic environment.</p>
MM3	Para 1.32	<p>This section includes the Councils' response to the opportunities and challenges facing the wider area, in the form of strategic policies that will help to deliver the vision and objectives. These policies only cover those matters that are of strategic relevance to all three authorities. Policies that address local matters are included in the following section of the Plan. <b>The Plan as a whole, including both Sections 1 and 2, will supersede previous Local Plan policies and allocations upon its adoption. A list of the policies superseded by Section 1 and Section 2 of the Plan respectively is included as an appendix to each section.</b></p>	<p><b>Effective, Legally-compliant</b></p> <p>To identify which previous plan policies are superseded.</p>

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<b>MM4</b>	Policy SP1	<p>Policy SP1 – Presumption in Favour of Sustainable Development</p> <p>When considering development proposals the Local Planning Authorities will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. They will always work pro-actively with applicants <del>jointly</del> to find solutions which mean that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area.</p> <p><del>Sustainable development in North Essex will demonstrably contribute to the strategic and local vision and objectives and will accord with the policies in this Local Plan (and, where relevant, with policies in neighbourhood plans).</del></p> <p><del>Development that complies with the Plan in this regard will be approved without delay, unless material considerations indicate otherwise.</del></p> <p><del>Where there are no policies relevant to the application or relevant policies are out of date at the time of making the decision then the Council will grant permission unless material considerations indicate otherwise — taking into account whether:</del></p> <ul style="list-style-type: none"> <li><del>any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the National Planning Policy Framework taken as a whole or specific policies in that Framework or the Plan that indicate that development should be restricted.</del></li> </ul>	<p><b>Effective, Consistent with national policy</b></p> <p>To clarify the policy and avoid conflict with or duplication of national policy.</p>
<b>MM5</b>	New paras 2.2-2.7	<p><b>Recreational disturbance Avoidance and Mitigation Strategy (RAMS)</b></p> <p><b>2.2 A Habitats Regulations Assessment (HRA) was completed for Section 1 of the Plan. The loss of off-site habitat, water quality and increased recreational disturbance were identified as issues with the potential to result</b></p>	<p><b>Effective, Legally-compliant</b></p> <p>To reflect the completion of the</p>

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		<p><b>in likely significant effects on European Sites, without mitigation to address the effects.</b></p> <p><b>2.3 The Appropriate Assessment (AA) identified a number of avoidance and mitigation measures to be implemented, to ensure that development proposals in the Plan will not result in adverse effects on the integrity of any Special Area of Conservation, Special Protection Area or Ramsar site, and are HRA compliant.</b></p> <p><b>2.4 To mitigate for the loss of off-site habitat, the AA identified the need for wintering bird surveys for the Tendring/Colchester Borders Garden Community as part of any project level development proposals and masterplanning (see also paragraph 8.4 and Policy SP8 paragraph F.21 below).</b></p> <p><b>2.5 To protect water quality, the AA recommended the inclusion of policy safeguards to ensure that adequate water and waste water treatment capacity or infrastructure upgrades are in place prior to development proceeding.</b></p> <p><b>2.6 Recreation activities can potentially harm Habitats Sites. The AA identified disturbance of water birds from people and dogs, and impacts from water sports/watercraft as the key recreational threats to Habitats Sites.</b></p> <p><b>2.7 To mitigate for any increases in recreational disturbance at Habitats Sites, the AA identified the need for a mitigation strategy. Natural England's West Anglian Team identified the Essex coast as a priority for a strategic and proactive planning approach as it is rich and diverse ecologically, and many of the coastal habitats are designated as Habitats Sites. Consequently, 12 local planning authorities in Essex have prepared an Essex Coast</b></p>	<p>Essex Coast RAMS Strategy Document and to ensure that the requirements of the Habitats Regulations are met.</p>

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		<p><b>Recreational disturbance Avoidance and Mitigation Strategy (RAMS).</b></p> <p><b>2.8 The Essex Coast RAMS sets out specific avoidance and mitigation measures by which disturbance from increased recreation can be avoided and mitigated thus enabling the delivery of growth without adversely affecting Habitats sites. These measures are deliverable, realistic, underpinned by robust up to date evidence, precautionary and provide certainty for developers around deliverability and contributions. The Essex Coast RAMS Strategy Document was completed in 2019 and will be supported by a SPD.</b></p>	
MM6	New Policy SP1A to follow after SP1	<p><b>Policy SP1A – Recreational disturbance Avoidance and Mitigation Strategy (RAMS)</b></p> <p><b>Contributions will be secured from development towards mitigation measures in accordance with the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy 2018-2038 (RAMS).</b></p>	<p><b>Justified, Effective, Legally-compliant</b></p> <p>New policy required in order to ensure that the requirements of the Habitats Regulations are met.</p>
MM7	Policy SP2	<p>Policy SP2 – Spatial Strategy for North Essex</p> <p>Existing settlements will be the principal focus for additional growth across <b>the North Essex Authorities area</b> within the Local Plan period. <b>(Mod A)</b> Development will be accommodated within or adjoining settlements according to their scale, sustainability and existing role both within each individual district and, where relevant, across the wider strategic area.</p> <p>Future growth will be planned to ensure <b>existing</b> settlements maintain their</p>	<p><b>Mod A – Effective</b> To clarify the geographical scope of the plan.</p> <p><b>Mod B – Effective</b></p>

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		<p>distinctive character and role, <b>to avoid coalescence between them and to conserve their setting. (Mod B)</b> Re-use of previously-developed land within settlements is an important objective, although this will be assessed within the broader context of sustainable development principles, particularly to ensure that development locations are accessible by a choice of means of travel.</p> <p><b>In Section 2 of its Local Plan, E</b>each local planning authority will identify a hierarchy of settlements where new development will be accommodated according to the role of the settlement, sustainability, its physical capacity and local needs. <b>(Mod C)</b></p> <p>Beyond the main settlements the authorities will support diversification of the rural economy and conservation and enhancement of the natural environment.</p> <p><del>Three new</del> <b>As part of the sustainable strategy for growth, the Tendring / Colchester Borders</b> <del>Garden e</del><b>Communities</b> will be developed and delivered as part of the sustainable strategy for growth, at the <b>broad</b> locations shown on Map 3.3 10.2 below <b>and on the Colchester and Tendring Local Plans Policies Maps.</b> <del>These</del> <b>new communities</b> will provide <b>a</b> strategic locations for <del>at least 7,500</del> <b>additional homes and employment</b> within the Plan period in North Essex. <del>Employment development will also be progressed with t</del> <b>The expectation is</b> that substantial additional housing and employment development will be delivered in <del>each</del> <b>the Garden e</b>Community beyond the current Local Plan periods. <del>They will be planned and developed drawing on Garden City principles, with necessary infrastructure and facilities provided and a high quality of place-making and urban design</del> <b>(Mod D).</b></p>	<p>To clarify the approach to existing settlements.</p> <p><b>Mod C – Effective</b> To clarify the respective roles of Sections 1 and 2.</p> <p><b>Mod D – Justified, Effective</b> To reflect the deletion of Policies SP9 &amp; SP10, give appropriate emphasis to employment development and avoid duplicating the requirements of other policies.</p>

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MM8	Policy SP3	<p>Policy SP3 – Meeting Housing Needs</p> <p>The local planning authorities will identify sufficient deliverable sites, <b>developable sites and/or</b> broad locations for their respective plan period, <del>against to meet</del> the <b>housing requirements</b> in the table below, <b>and will incorporate additional provision to ensure flexibility and choice and competition for land. (Mod A)</b></p> <p>Each authority will maintain a sufficient supply of deliverable sites to provide for at least five years' worth of housing, <b>plus an appropriate buffer in accordance with national policy</b>, and will work proactively with applicants to bring forward sites that accord with the overall spatial strategy and relevant policies in the plan. <b>The annual housing requirement figures set out below will be used as the basis for assessing each authority's five-year housing land supply, subject to any adjustments in Section 2 of each plan to address any undersupply since 2013. (Mod B)</b></p> <p><b>The authorities will review their housing requirements regularly in accordance with national policy requirements, and in doing so will have regard to the housing needs of the wider area. (Mod C)</b></p>	<p><b>Mod A – Positively prepared</b> To include reference to additional provision to ensure that housing needs can be met.</p> <p><b>Mod B – Consistent with national policy, Effective</b> To reflect the national policy requirement for a buffer and to clarify the role of Section 2 in addressing housing supply issues to ensure objectively assessed development needs are met.</p> <p><b>Mod C – Consistent with national policy</b> To address the</p>

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		<table><tr><th>Local Authority</th><th>Objectively Assessed Need for Housing requirement per annum</th><th>Total minimum housing supply in requirement for the plan period (2013 – 2033) <b>(Mod D)</b></th></tr><tr><td>Braintree</td><td>716</td><td>14,320</td></tr><tr><td>Colchester</td><td>920</td><td>18,400</td></tr><tr><td>Tendring</td><td>550</td><td>11,000</td></tr><tr><td><b>Total</b></td><td><b>2,186</b></td><td><b>43,720</b></td></tr></table>	Local Authority	Objectively Assessed Need for Housing requirement per annum	Total minimum housing supply in requirement for the plan period (2013 – 2033) <b>(Mod D)</b>	Braintree	716	14,320	Colchester	920	18,400	Tendring	550	11,000	<b>Total</b>	<b>2,186</b>	<b>43,720</b>	<p>national policy requirement to have regard to unmet needs in adjacent authorities.</p> <p><b>Mod D – Effective</b> To clarify terminology so as to avoid ambiguity.</p>
Local Authority	Objectively Assessed Need for Housing requirement per annum	Total minimum housing supply in requirement for the plan period (2013 – 2033) <b>(Mod D)</b>																
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<b>Total</b>	<b>2,186</b>	<b>43,720</b>																
MM9	Policy SP4	<p>Policy SP4 – Providing for Employment and Retail <b>(Mod A)</b></p> <p>A strong, sustainable and diverse economy will be promoted across North Essex with the Councils <b>local planning authorities (Mod B)</b> pursuing a flexible approach to economic sectors showing growth potential across the Plan period.</p> <p><del>Employment forecasts have been developed using two standard models (East of England Forecasting Model (EEFM) and Experian 2016) which forecast total job growth for each of the local authorities based on past trends. Each local authority has been advised on the most appropriate modelling figure to use in the context of reconciling job and housing demand. These figures are set out for the housing market as follows for the period 2013-2037:-</del></p> <p>Annual Job Forecast:</p>	<p><b>Mod A – Effective</b> To clarify the scope of the policy.</p> <p><b>Mod B – Effective</b> To make the Plan’s terminology consistent</p>															



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Braintree (EEFM)	490									
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		<p><b>that provision is made within the ranges set out in the table below. (Mod D)</b></p> <p>Hectares of B use employment land required:</p> <table><tr><td></td><td>Baseline (2012 Based SNPP)</td><td>Higher Growth Scenario</td></tr><tr><td>Braintree</td><td><del>23</del> <b>20.9</b></td><td>43.3</td></tr><tr><td>Colchester</td><td>22.0</td><td><del>55.8</del> <b>30.0</b></td></tr><tr><td>Tendring</td><td><del>20</del> <b>12.0</b></td><td><del>38</del> <b>20.0</b></td></tr><tr><td><b>North Essex</b></td><td><del>65</del> <b>54.9</b></td><td><del>137.4</del> <b>93.3</b></td></tr></table> <p>(Mod E)</p>		Baseline (2012 Based SNPP)	Higher Growth Scenario	Braintree	<del>23</del> <b>20.9</b>	43.3	Colchester	22.0	<del>55.8</del> <b>30.0</b>	Tendring	<del>20</del> <b>12.0</b>	<del>38</del> <b>20.0</b>	<b>North Essex</b>	<del>65</del> <b>54.9</b>	<del>137.4</del> <b>93.3</b>	<p>included in Section 2 to ensure that the requirements in policy SP4 are met.</p> <p><b>Mod E – Justified</b> To ensure that the employment land requirement figures for each authority reflect the evidence</p>
	Baseline (2012 Based SNPP)	Higher Growth Scenario																
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MM10	Policy SP5 First para	<p>Policy SP5 – Infrastructure and Connectivity</p> <p><del>All Development</del> must be supported by <b>the</b> provision of <del>the</del> infrastructure, services and facilities that are required to serve the needs arising from <del>new</del> <b>the</b> development.</p> <p><b>The requirements in section A of this policy apply only to the Tendring / Colchester Borders Garden Community, whilst the remaining sections B, C, D and E apply to all allocations and development proposals in the North Essex Authorities area.</b></p> <p><del>The following are strategic priorities for infrastructure provision or improvements</del></p>	<p><b>Positively Prepared, Effective</b></p> <p>To ensure the plan addresses infrastructure requirements and to clarify the scope of policy requirements for the Garden</p>															

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		<del>within the strategic area</del>	Community.
MM11	Policy SP5 New para A	<p><b>A Tendring / Colchester Borders Garden Community</b></p> <p><b>1 The Development Plan Document (DPD) for the Tendring / Colchester Borders Garden Community will include:</b></p> <p><b>a) An infrastructure delivery strategy and phasing plan that sets out how infrastructure, services and facilities will be provided. Infrastructure delivery will align with each development phase and be supported by suitable mechanisms to deliver the infrastructure both on and off-site;</b></p> <p><b>b) Details of the design and delivery of Route 1 of the rapid transit system, and a programme for the integration of the garden community into the system. The route will be designed to accommodate future route enhancements and technology improvements; and</b></p> <p><b>c) Target modal shares for each transport mode and details of sustainable transport measures to support their achievement.</b></p> <p><b>2 Before any planning approval is granted for development forming part of the Tendring / Colchester Borders Garden Community, the following strategic transport infrastructure must have secured planning consent and funding approval:</b></p> <p><b>a) A120–A133 link road; and</b></p>	<p><b>Positively-prepared, Effective</b></p> <p>To clarify essential infrastructure requirements for the Garden Community.</p>

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		<p><b>b) Route 1 of the rapid transit system as defined in the North Essex Rapid Transit System: From Vision to Plan document (July 2019).</b></p> <p><b>3. Sustainable transport measures will be provided from first occupation at the Tendring / Colchester Borders Garden Community to support the achievement of the target modal shares as defined in the DPD for the garden community.</b></p> <p><b>4. Other strategic infrastructure requirements for the Tendring / Colchester Borders Garden Community are set out in sections D, E and F of Policy SP8, and will be further defined in the DPD for the garden community.</b></p>	
MM12	Policy SP5, Para B	<p><b>B. Transportation and Travel</b></p> <p><b>The local planning authorities will work with government departments, Highways England, Essex County Council, Network Rail, rail and bus operators, developers and other partners to deliver the following:</b></p> <ul style="list-style-type: none"> <li><b>• Changes in travel behaviour by applying the modal hierarchy and increasing opportunities for sustainable modes of transport that can compete effectively with private vehicles;</b></li> <li><b>• A comprehensive network of segregated walking and cycling routes linking key centres of activity;</b></li> <li><del>• New and improved infrastructure required to support economic growth, strategic and site specific priorities outlined in the second part of each Local Plan</del></li> <li><del>• Substantially improved connectivity by promoting more sustainable travel patterns, introducing urban transport packages to increase transport choice, providing better public transport infrastructure and services, and enhanced</del></li> </ul>	<p><b>Effective</b></p> <p>To clarify and avoid duplication of transport infrastructure requirements.</p>

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		<p>inter-urban transport corridors;</p> <ul style="list-style-type: none"> <li>• <del>— Increased rail capacity, reliability and punctuality; and reduced overall journey times by rail</del></li> <li>• <del>Support changes in travel behaviour by applying the modal hierarchy and increasing opportunities for sustainable modes of transport that can compete effectively with private vehicles</del></li> <li>• <del>Prioritise</del> <b>Improved urban and inter-urban P</b>public transport, particularly in the urban areas, including, <b>and</b> new and innovative ways of providing public transport, including: <ul style="list-style-type: none"> <li>○ high quality rapid transit networks and connections in and around urban areas with links to the new garden community;</li> <li>○ maximising the use of the local rail network to serve existing communities and locations for large-scale growth;</li> <li>○ a bus network <b>providing a high-frequency, reliable and efficient service</b>, <del>that is high quality, reliable, simple to use, integrated with other transport modes serving</del> and offers flexibility to serve areas of new demand;</li> <li>○ promoting wider use of community transport schemes;</li> </ul> </li> <li>• <b>Increased rail capacity, reliability and punctuality, and reduced overall journey times by rail;</b></li> <li>• <b>New and</b> improved road infrastructure and strategic highway connections to reduce congestion and provide more reliable journey times along the A12, A120 and A133 <del>to improve access to markets and suppliers for business, widen employment opportunities and support growth, specifically:</del> <ul style="list-style-type: none"> <li>○ Improved <b>access to and capacity of</b> junctions on the A12 and other main roads <del>to reduce congestion and address safety;</del></li> <li>○ A dualled A120 <del>between the A12 and</del> <b>from Braintree to the A12.</b></li> <li>○ <del>A comprehensive network of segregated walking and cycling routes linking key centres of activity contributing to an attractive, safe, legible and prioritized walking/cycling environment</del></li> </ul> </li> </ul>	

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		<ul style="list-style-type: none"> <li>Develop innovative strategies for the management of private car use and parking including <b>the promotion of car clubs and car sharing, and provision of support for electric car charging points.</b></li> </ul>	
MM13	Policy SP5, Para C	<p><b>C. Social Infrastructure</b></p> <p><b>The local planning authorities will work with relevant providers and developers to facilitate the delivery of a wide range of social infrastructure required for healthy, active and inclusive communities, minimising negative health and social impacts, both in avoidance and mitigation, as far as is practicable.</b></p> <p>Education</p> <ul style="list-style-type: none"> <li><del>Provide</del> <b>Sufficient school places will be provided</b> in the form of expanded or new primary and secondary schools together with early years and childcare facilities <b>that are phased with new development</b>, with larger developments setting aside land and/or contributing to the cost of delivering land for new schools where required.</li> <li><del>Facilitate and support provision of</del> <b>Practical vocational training, apprenticeships, and further and higher education will be provided and supported.</b></li> </ul> <p>Health and Wellbeing</p> <ul style="list-style-type: none"> <li><del>Ensure that essential</del> <b>Healthcare infrastructure will be</b> is provided as part of new developments of appropriate scale in the form of expanded or new <del>healthcare</del> facilities including primary and acute care; pharmacies; dental surgeries; opticians; supporting community services including hospices, treatment and counselling centres.</li> <li>Require new development to maximise its positive contribution in creating healthy communities and minimise its negative health impacts, both in avoidance and mitigation, as far as is practicable.</li> </ul>	<p><b>Effective</b></p> <p>To clarify policy wording and links between provision of different types of social infrastructure and new development</p>

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		<ul style="list-style-type: none"> <li><b>The conditions for a healthy community will be provided through the pattern of development, good urban design, access to local services and facilities; green open space and safe places for active play and food growing, and which are all accessible by walking, cycling and public transport.</b></li> </ul>	
MM14	Policy SP5, Para D	<p><b>D. Digital Connectivity</b></p> <p><b>Comprehensive digital access to support business and community activity will be delivered through the</b> <del>Roll-out of superfast</del> <b>ultrafast</b> broadband across North Essex to secure the earliest availability for <b>of full fibre connections</b> <del>universal broadband coverage and fastest connection speeds for all existing and new developments (residential and non-residential), where .a</del> <b>All new properties will</b> allow for the provision for <del>super</del> <b>ultrafast</b> broadband in order to allow connection to that network as and when it is made available.</p>	<p><b>Effective</b></p> <p>To reflect latest terminology, and remove duplicated text.</p>
MM15	Policy SP5 – New Para E	<p><b>E. Water &amp; Waste water</b></p> <p><b>The local planning authorities will work with Anglian Water, Affinity Water, the Environment Agency and developers to ensure that there is sufficient capacity in the water supply and waste water infrastructure to serve new development. Where necessary, improvements to water infrastructure, waste water treatment and off-site drainage should be made ahead of the occupation of dwellings to ensure compliance with environmental legislation.</b></p>	<p><b>Effective</b></p> <p>To ensure that the necessary infrastructure requirements are reflected in the policy.</p>
MM16	Policy SP6	<p>Policy SP6 – Place-shaping Principles</p> <p>All new development must meet the <del>highest</del> <b>high (Mod A)</b> standards of urban and architectural design. <del>The local authorities encourage the use of d</del> <b>Development</b> frameworks, masterplans, <b>design codes</b>, and other design guidance documents <b>and will be prepared in consultation with stakeholders where they are needed</b></p>	<p><b>Mod A – Consistent with national policy</b></p> <p>Modified to align with NPPF guidance and to indicate a proportionate design</p>

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		<p><del>to support this objective. use design codes where appropriate for strategic scale development.</del> <b>(Mod B).</b></p> <p>All new development should reflect the following <b>place-shaping</b> principles, <b>where applicable (Mod C)</b>:</p> <ul style="list-style-type: none"> <li>• Respond positively to local character and context to preserve and enhance the quality of existing <del>communities</del> <b>places (Mod D)</b> and their environs.</li> <li>• Provide buildings that exhibit individual architectural quality within well-considered public and private realms;</li> <li>• Protect and enhance assets of historical or natural value;</li> <li>• <b>Incorporate biodiversity creation and enhancement measures (Mod E);</b></li> <li>• Create well-connected places that prioritise the needs of pedestrians, cyclists and public transport services above use of the private car;</li> <li>• <del>Where possible, p</del>Provide a mix of land uses, services and densities with well-defined public and private spaces to create sustainable well-designed neighbourhoods;</li> <li>• Enhance the public realm through additional landscaping, street furniture and other distinctive features that help to create a sense of place;</li> <li>• Provide streets and spaces that are overlooked and active and promote inclusive access;</li> <li>• Include parking facilities that are well integrated as part of the overall design and are adaptable if levels of private car ownership fall;</li> <li>• Provide an integrated <b>and connected</b> network of <del>multi-functional</del> <b>biodiverse</b> public open space and green and blue infrastructure <del>that connects with</del></li> </ul>	<p>response.</p> <p><b>Mod B – Effective</b> To clarify the role of design guidance documents.</p> <p><b>Mod C – Effective</b> To clarify that not all the principles are applicable to some developments.</p> <p><b>Mod D – Effective</b> Provides a more appropriate definition of areas covered by the requirement to preserve and enhance.</p> <p><b>Mod E – Consistent with national policy</b> To ensure that development considers environmental enhancement consistent with 2012 NPPF paragraph 109.</p> <p><b>Mod F – Consistent with national policy</b> To ensure that new</p>



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		<p><del>existing green infrastructure where possible,</del> <b>thereby helping to alleviate recreational pressure on designated sites (Mod F);</b></p> <ul style="list-style-type: none"> <li>• Include measures to promote environmental sustainability including addressing energy and water efficiency, and provision of appropriate <b>water and</b> wastewater and flood mitigation measures <b>including the use of open space to provide flora and fauna rich sustainable drainage solutions (Mod G);</b> and</li> <li>• Protect the amenity of existing and future residents and users with regard to noise, vibration, smell, loss of light, <b>overbearing</b> and overlooking <b>(Mod H).</b></li> </ul>	<p>development incorporates biodiversity creation and enhancement and to recognise its role in helping to alleviate recreational pressure on designated sites</p> <p><b>Mod G – Consistent with national policy</b> To highlight potential for sustainable water management solutions</p> <p><b>Mod H – Effective</b> To ensure principle is comprehensive.</p>
MM17	Para 8.4	<p>Loss of off-site habitat – To mitigate for the loss of offsite habitat, the Appropriate Assessment identified the need for wintering bird surveys for the Tendring / Colchester Borders Garden Community as part of any project-level development proposals and masterplanning, to determine the sites of individual importance for golden plover and lapwing and inform mitigation proposals. <del>and a commitment to mitigation and funding of Tendring / Colchester Borders Garden Community is required within the Section 1 Strategic Plan dependent on the findings of bird surveys.</del> <b>Depending on the findings of the wintering bird surveys, development may need to be phased to take into account the cumulative numbers of SPA birds. In the unlikely but possible event that cumulative numbers of SPA birds affected are likely to exceed the threshold of</b></p>	<p><b>Legally-compliant</b></p> <p>To ensure that the requirements of the Habitats Regulations are met.</p>

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		<b>significance (i.e &gt;1% of the associated European Site), appropriate mitigation in the form of habitat creation and management in perpetuity, either on-site or through provision of strategic sites for these species elsewhere, will be required. Where that mitigation requires the creation and management of suitably located habitat, feeding productivity for these SPA species should be maximised, and such mitigatory habitat would need to be provided and fully functional prior to development which would affect significant numbers of SPA birds.</b>	
MM18	Policy SP7, First Section	<p>Policy SP7 – Development and Delivery of <del>a New Garden Communities</del> in North Essex</p> <p>The following <del>three</del> new garden communities <del>is</del> are proposed in North Essex at the broad location shown on Map 10.2. <b>(Mod A)</b></p> <p>Tendring/Colchester Borders, a new garden community <b>which</b> will deliver <b>between 2,200 and 2,500 homes, 7 hectares of employment land and provision for Gypsies and Travellers</b> within the Plan period (as part of an <b>expected</b> overall total of between 7,000 and 9,000 homes <b>and 25 hectares of employment land</b> to be delivered beyond 2033). <b>(Mod B)</b></p> <p><del>Colchester/Braintree Borders, a new garden community will deliver 2,500 homes within the Plan period (as part of an overall total of between 15,000 – 24,000 homes to be delivered beyond 2033).</del> <b>(Mod C)</b></p> <p><del>West of Braintree in Braintree DC, a new garden community will deliver 2,500 homes within the Plan period (as part of an overall total of between 7,000–10,000 homes to be delivered beyond 2033).</del> <b>(Mod D)</b></p>	<p><b>Mod A – Justified, Effective</b> See Inspector’s letter of 15 May 2020 [IED/022].</p> <p><b>Mod B – Justified, Effective</b> To properly reflect the role of the garden community in providing for housing and employment growth and for Gypsies and Travellers</p> <p><b>Mods C &amp; D – Justified</b> See Inspector’s letter</p>

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MM19	Policy SP7, principle (i)	Community and stakeholder empowerment <b>participation</b> in the design and delivery of <del>each</del> <b>the</b> garden community from the outset and a long-term community engagement and activation strategy.	<p><b>Effective</b></p> <p>Wording amended to</p>

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			clarify the policy intention.
MM20	Policy SP7, principle (ii)	<p>The public sector working pro-actively and collaboratively with the private sector to design, and bring forward these garden communities, deploying new models of delivery <b>where appropriate</b> <del>sharing risk and reward</del> and ensuring that the cost of achieving the following is borne by landowners and those promoting the developments: (a) securing a high quality of place-making, (b) ensuring the timely delivery of both on-site and off-site infrastructure required to address the impact of these new communities, and (c) providing and funding a mechanism for future stewardship, management, maintenance and renewal of community infrastructure and assets. <b>Where appropriate, developers will be expected to contribute towards publicly-funded infrastructure, including a contribution towards the A120-A133 link road.</b> Given the scale of and time period for development of these new garden communities, the appropriate model of delivery will <b>need to</b> secure a comprehensive approach to the delivery of each new community in order to achieve the outcomes outlined <b>in points (a) – (c) in this paragraph</b> <del>above</del>, avoid a piecemeal approach to development, provide the funding and phasing of both development and infrastructure, and be sustainable and accountable in the long term.</p>	<p><b>Justified</b></p> <p>To clarify the policy approach to delivery models and developer contributions.</p>
MM21	Policy SP7, principle (iii)	<p>Promotion and execution of the highest quality of planning, design and management of the built and public realm so that the garden communities <del>are</del> <b>is</b> characterised as <del>a</del> distinctive places that capitalises on local assets, <b>respects its context</b>, and establishes <del>an</del> environments that promotes health, happiness and well-being. <del>This will involve developing a cascade of design guidance based on a robust assessment of historic and natural environmental constraints and opportunities for enhancement. Guidance which may include concept frameworks, detailed masterplans and design codes and other guidance will be put in place to inform and guide development proposals and planning applications. Planning applications and any local development orders or other consenting</del></p>	<p><b>Effective</b></p> <p>To avoid duplicating the requirements of policy SP8.</p>

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		<del>mechanisms for the garden communities will be expected to be consistent with approved design guidance.</del>	
MM22	Policy SP7, principle (iv)	Sequencing of development and infrastructure provision (both on-site and off-site) to ensure that the latter is provided ahead of or in tandem with the development it supports to address the impacts of the new garden communities, meet the needs of its residents and establish sustainable travel patterns. <b>To ensure new development does not have an adverse effect on any European Protected or nationally important site and complies with environmental legislation (notably the Water Framework Directive and the Habitats Directive), the required waste water treatment capacity including any associated sewer connections must be available ahead of the occupation of dwellings.</b>	<p><b>Effective</b></p> <p>To provide a policy safeguard to ensure that phasing of development does not exceed capacity.</p>
MM23	Policy SP7, principle (v)	Development that provides for a truly balanced and inclusive community and meets the housing needs of local people including a mix of dwelling sizes, tenures and types, <del>including provision for self- and custom-built homes, and provision for the aging population,</del> <b>and provision for Gypsies and Travellers; and that</b> meets the requirements of those most in need including <b>the provision of 30% affordable housing in each</b> the garden community.	<p><b>Justified, Effective</b></p> <p>To ensure that the policy reflects all housing needs.</p>
MM24	Policy SP7, principles (vi), (vii), (viii) & (xiv)	<b>Change</b> references to 'garden communities' (plural) to 'garden community' (singular).	<p><b>Justified</b></p> <p>See Inspector's letter of 15 May 2020 [IED/022].</p>
MM25	Policy SP7, principle (x)	Create distinctive environments which <b>are based on comprehensive assessments of</b> <del>relate to</del> the surrounding environment and which celebrate natural and historic environments and systems, utilise a multi-functional green-grid to create significant networks of new green infrastructure including <b>a new country parks at each the</b>	<p><b>Effective</b></p> <p>To clarify the requirement to provide</p>

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		garden <del>community</del> , and provide a high degree of connectivity to existing corridors and networks and enhance biodiversity.	a robust evidence base on historic and natural environment issues.
MM26	Policy SP7, principle (xi)	Secure a smart and sustainable approach that fosters climate resilience and a 21st century environment in the design and construction of <del>each</del> the garden community to secure net gains in local biodiversity, highest standards of energy efficiency and innovation in technology to reduce <b>the</b> impact of climate change, <b>the incorporation of innovative</b> water efficiency/ <b>re-use measures</b> (with the aim of being water neutral in identified areas of serious water stress), and sustainable waste and mineral management.	<p><b>Effective</b></p> <p>To clarify these infrastructure requirements.</p>
MM27	Policy SP7, final paragraph	<p><del>These principles are elaborated upon in the North Essex Garden Community Charter.</del></p> <p><del>A Development Plan Document will be developed for each of the garden communities to set out the principles of their design, development and phasing as well as a mechanism to appropriately distribute housing completions to the three Councils and this will be agreed through a Memorandum of Understanding.</del></p>	<p><b>Effective</b></p> <p>Policy re-ordered to provide clarity on the role of the DPD.</p>
MM28	Policy SP8, First para	<p>Policy SP8 – Tendring / Colchester Borders Garden Community</p> <p><del>The adopted policies map identifies the broad location for the development of a new garden community of which the details and final number of homes will be set out in a Strategic Growth Development Plan Document (DPD) to be prepared jointly between Colchester BC and Tendring DC. and which will incorporate around 2,500 dwellings and within the Plan period (as part of an overall total of between 7,000-9,000 homes) and provision for Gypsy and Travellers.</del></p>	<p><b>Effective</b></p> <p>To avoid duplication of the requirements of Policy SP7.</p>
MM29	Policy SP8,	<del>The Strategic Growth</del> <b>Development Plan Document (DPD) required for the</b>	<b>Justified, Effective</b>

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	Second para	<b>Tendring / Colchester Borders Garden Community by Policy SP7 will define the will set out the nature, form and boundary of the garden community and the amount of development it will contain. The adoption of the DPD will be contingent on the completion of a Heritage Impact Assessment carried out in accordance with Historic England guidance. The Heritage Impact Assessment will assess the impact of proposed allocations upon the historic environment, inform the appropriate extent and capacity of the development and establish any mitigation measures necessary.</b> The document DPD will be produced in consultation with <b>the local community and</b> stakeholders and will include a concept plan showing the disposition and quantity of future land-uses, and give a three-dimensional indication of the urban design and landscape parameters which will be incorporated into any future planning applications; together with a phasing and implementation strategy which sets out how the rate of development will be linked to the provision of the necessary social, physical and environmental infrastructure to ensure that the respective phases of the development do not come forward until the necessary infrastructure has been secured. <del>The DPD will provide the framework for the subsequent development of more detailed masterplans and other design and planning guidance for the Tendring / Colchester Borders Garden Community. The</del> <b>DPD and any application for planning permission for development forming part of the garden community must be consistent with the requirements set out in this policy.</b>	To provide more detail on the role of the DPD and to make it clear that the DPD will be informed by a Heritage Impact Assessment.
MM30	Policy SP8, New third paragraph	<b>For the Plan period up to 2033, housing delivery from the garden community, irrespective of its actual location, will be distributed equally between Colchester Borough Council and Tendring District Council. If, after taking into account its share of delivery from the garden community, either of those authorities has a shortfall in delivery against the housing requirement for its area, it will need to make up the shortfall within its own area. It may not use the other authority's share of delivery from the garden community to make up the shortfall.</b>	<b>Positively planned, Effective</b>  To clarify how the housing at the garden community will be distributed, and the process for addressing

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			unmet need.
MM31	Policy SP8, Para A.2.	<p>Detailed masterplans and design guidance, <b>based on a robust assessment of historic and natural environmental constraints and opportunities for enhancement</b>, will be <b>adopted</b> <del>put in place</del> to inform and guide development proposals and planning applications <b>for the garden community</b>. <del>Planning applications for this garden community will be expected to be consistent with approved DPDs and subsequent masterplans and design and planning guidance.</del></p>	<p><b>Justified</b></p> <p>To ensure that masterplans and design guidance are based on appropriate evidence.</p>
MM32	Policy SP8, Para C.5.	<p><b>The garden community will make provision for a wide range of jobs, skills and training opportunities will be created in the garden community. The DPD will allocate about 25 hectares of B use employment land within the garden community.</b> This may include <b>provision for B1 and/or non B class employment generating uses towards the south of the site in proximity to the existing University of Essex and Knowledge Gateway, and provision for B1, B2 and B8 businesses to the north of the site close to the A120.</b></p>	<p><b>Positively prepared</b></p> <p>To clarify the process for determining employment land allocations.</p>
MM33	Policy SP8, Para D.7	<p>A package of measures will be introduced to encourage smarter transport choices to meet the needs of the new community and <b>to maximise the opportunities for sustainable travel. Policy SP5 requires planning consent and full funding approval for the A120-A133 link road and Route 1 of the rapid transit system to have been secured before planning approval is granted for any development at the garden community.</b></p> <p><b>Additional transport priorities</b> <del>including</del> the provision of a network of footpaths, cycleways and bridleways to enhance permeability within the site and to access the</p>	<p><b>Positively prepared, Effective</b></p> <p>To clarify the transport infrastructure requirements for the garden community.</p>



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		<p>adjoining areas, development of of a public rapid transit system connecting the garden community to Essex University and Colchester town centre park and ride facilities, and other effective integrated measures to mitigate the transport impacts of the proposed development on the strategic and local road network. Longer term transport interventions will need to be carefully designed to minimise the impacts on the strategic and local road <b>transport</b> network and fully mitigate any environmental or traffic impacts arising from the development. These shall include bus (or other public transit provisions) priority measures between the site, University of Essex, Hythe station and Colchester Town Centre;</p>	
MM34	Policy SP8, Para D.9	<p>Primary vehicular access to the site will be provided off the A120 and A133. <b>Any other road improvements required to meet needs arising from the garden community will be set out in the DPD and further defined as part of the masterplanning process.</b></p>	<p><b>Positively prepared, Effective</b></p> <p>To clarify the transport infrastructure requirements for the garden community.</p>
MM35	Policy SP8, Para E.13	<p><b>Increased</b> primary healthcare facilities <b>capacity</b> will be provided to serve the new development <b>as appropriate. This may be by means of new infrastructure or improvement, reconfiguration, extension or relocation of existing medical facilities.</b></p>	<p><b>Positively prepared, Effective</b></p> <p>To clarify the healthcare requirements for the garden community.</p>
MM36	Policy SP8, Para F.17	<p><b>The delivery of smart, innovative and sustainable water efficiency/re-use solutions that fosters climate resilience and a 21<sup>st</sup> century approach towards water supply, water and waste water treatment and flood risk management.</b></p>	<p><b>Positively prepared, Effective</b></p>

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		<p><b>Taking a strategic approach to flood risk through the use of Strategic Flood Risk Assessments and the updated Climate Projections 2019 and identifying opportunities for Natural Flood Risk Management.</b> Provision of improvements to waste water treatment plant including an upgrade to the Colchester Waste Water Treatment Plan and off-site drainage improvements <b>aligned with the phasing of the development within the plan period and that proposed post 2033. To ensure new development does not have an adverse effect on any European Protected or nationally important site and complies with environmental legislation (notably the Water Framework Directive and the Habitats Directive), the required waste water treatment capacity including any associated sewer connections must be available ahead of the occupation of dwellings.</b></p>	To clarify the requirements for water supply and waste water infrastructure and to comply with the requirements of the Habitats Regulations.
MM37	Policy SP8, Para F18	<p>Provision, management and on-going maintenance of sustainable surface water drainage measures to manage and mitigate the risk of flooding on site and which will reduce the risk of flooding to areas downstream or upstream of the development. <b>To ensure new development does not have an adverse effect on any European Protected or nationally important sites and complies with environmental legislation (notably the Water Framework Directive and the Habitats Directive), the required waste water treatment capacity including any associated sewer connections must be available ahead of the occupation of dwellings.</b></p>	<p><b>Effective</b></p> <p>To ensure that phasing of development does not exceed the capacity of waste water infrastructure.</p>
MM38	Policy SP8, New Para F.20 ( <i>Renumber subsequent paragraphs accordingly</i> )	<p><b>Conserve, and where appropriate enhance, the significance of heritage assets (including any contribution made by their settings) both within and surrounding the site. Designated heritage assets within the garden community area include the Grade II listed Allen's Farmhouse, Ivy Cottage, Lamberts, and three buildings at Hill Farmhouse. Designated heritage assets nearby include the Grade I listed Church of St Anne and St Lawrence, Elmstead, the Grade II* listed Wivenhoe House, Elmstead Hall and Spring Valley Mill and numerous Grade II listed buildings as well as the Grade II listed Wivenhoe Registered Park and Garden. Harm to the significance of a designated heritage asset should be avoided in the first</b></p>	<p><b>Consistent with national policy</b></p> <p>To ensure that the policy gives appropriate protection to the historic environment.</p>

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		<b>instance.</b>	
<b>MM39</b>	Policy SP8, Para F.21 (previously F.20)	<p>Avoidance, <del>P</del>protection and/or enhancement of heritage and biodiversity assets within and surrounding the site; <b>including Bullock Wood SSSI, Ardleigh Gravel Pits SSSI, Wivenhoe Pits SSSI and Upper Colne Marshes SSSI and relevant European protected sites. Contributions will be secured towards mitigation measures in accordance with the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy. Wintering bird surveys will be undertaken at the appropriate time of year as part of the DPD preparation to identify any offsite functional habitat. Should any be identified, development must firstly avoid impacts. Where this is not possible, development must be phased to deliver habitat creation and management either on- or off-site to mitigate any significant impacts. Any such habitat must be provided and fully functional before any development takes place which would affect significant numbers of SPA birds.</b></p>	<p><b>Legally compliant, Effective</b></p> <p>To ensure that the requirements of the Habitats Regulations are met.</p>
<b>MM40</b>	Policy SP8 New Para F. 26 (final paragraph)	<p><b>Allocation of additional land within the garden community, to accommodate University expansion, which is at least equivalent in size to the allocation in the Colchester Local Development Framework Site Allocations document October 2010.</b></p>	<p><b>Justified, Effective</b></p> <p>To ensure that adequate land is allocated to meet the needs of the University.</p>
<b>MM41</b>	Policy SP9	<b>Delete the whole of Policy SP9.</b>	<p><b>Justified</b></p> <p>See Inspector's letter of 15 May 2020 [IED/022]</p>

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MM42	Policy SP10	<b>Delete</b> the whole of Policy SP10.	<p><b>Justified</b></p> <p>See Inspector's letter of 15 May 2020 [IED/022]</p>
MM43	Braintree Section 1 Local Plan Chapter 10	<p><b><u>In the Braintree Section 1 Local Plan Chapter 10 (Appendices &amp; Maps):</u></b></p> <p><b>Delete</b> the West of Braintree and Colchester / Braintree Borders Garden Community designations from Map 10.1, change the title of the map to 'Key Diagram', and change the legend for 'Garden Communities' to read 'Garden Community'.</p> <p><b>Delete</b> Maps 10.2A and 10.3B.</p> <p><b>Replace</b> Maps 10.4C &amp; 10.5D with new Map 10.2 below entitled 'Tendring Colchester Borders Garden Community – Broad Location'.</p>	<p><b>Effective</b></p> <p>To reflect the deletion of policies SP9 &amp; SP10 and to show the broad location of the Tendring / Colchester Borders Garden Community accurately</p>
MM44	Colchester Section 1 Plan Chapter 10	<p><b><u>In the Colchester Section 1 Local Plan Chapter 10 (Section One Maps):</u></b></p> <p><b>Delete</b> the West of Braintree and Colchester / Braintree Borders Garden Community designations from Map 10.1, and change the legend for 'Garden Communities' to read 'Garden Community'.</p> <p>Following Map 10.1, <b>insert</b> new Map 10.2 below entitled 'Tendring Colchester Borders Garden Community – Broad Location'.</p>	<p><b>Effective</b></p> <p>To reflect the deletion of policies SP9 &amp; SP10 and to show the broad location of the Tendring / Colchester Borders Garden Community accurately</p>

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MM45	Tendring Section 1 Plan Maps	<p><b><u>In the Tendring Section 1 Local Plan:</u></b></p> <p><b>Delete</b> the West of Braintree and Colchester / Braintree Borders Garden Community designations from Map 1.</p> <p><b>Delete</b> the West of Braintree and Colchester / Braintree Borders Garden Community designations from Map 2, and change the legend for 'Garden Communities' to read 'Garden Community'. Retitle the map '10.1 Key Diagram', and move it to the end of the Section 1 Plan.</p> <p>Following Map 10.1, <b>insert</b> new Map 10.2 below entitled 'Tendring Colchester Borders Garden Community – Broad Location'.</p> <p><b>Delete</b> Local Map B.7 Tendring Colchester Borders Garden Community</p>	<p><b>Effective</b></p> <p>To reflect the deletion of policies SP9 &amp; SP10 and to show the broad location of the Tendring / Colchester Borders Garden Community accurately</p>
MM46	At end of Section 1 Plan	Insert Appendix A below entitled 'List of policies superseded by Section 1 of the Plan'	<p><b>Legally compliant</b></p> <p>To comply with relevant legislation.</p>
MM47	Colchester Local Plan Front Cover	The Publication Draft stage of the Colchester Borough Local Plan <b>20132017-2033</b>	<p><b>Justified, Effective</b></p> <p>To ensure that the cover of the plan shows the correct plan period.</p>

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#### TO BE ADDED TO THE SCHEDULE

- Map 10.2 (based on EXD/080A) entitled '*Tendring Colchester Borders Garden Community – Broad Location*'
- Appendix A, entitled '*List of policies superseded by Section 1 of the Plan*'

## **Section 1 Local Plan Background Information**

### **1. Background**

- 1.1 Section 1 of the emerging Local Plan ('the Section 1 Plan') currently sets out an overarching strategy for future growth across Braintree, Colchester and Tendring – the 'North Essex Authorities' ('NEAs'). As well as including policies setting the overall housing and employment requirements for North Essex up to 2033, the Section 1 Plan proposes three new cross-boundary 'Garden Communities' along the A120 corridor. In contrast, 'the Section 2 Plan' for each of the three authorities contains more specific local policies and proposals relevant only to their individual area.
- 1.2 The three Garden Communities proposed in the Section 1 Plan are:
- Tendring/Colchester Borders Garden Community (Policy SP8) – 7,000-9,000 homes on land between Elmstead Market and Colchester.
  - Colchester/Braintree Borders Garden Community (Policy SP9) – 15,000 to 24,000 homes on land around Marks Tey.
  - West of Braintree Garden Community (Policy SP10) – 7,000 to 10,000 homes on land north of the A120 west of Rayne.
- 1.3 These are long-term comprehensively-planned development proposals designed to follow 'Garden Community Principles' including pro-active collaboration between the public and private sectors, community empowerment and engagement, high quality design and management of the built and public realm, integration of infrastructure and development and long-term governance and stewardship arrangements. The developments are expected to take place partly within the timescale of the Local Plan (to 2033) but mostly beyond that period. The Section 1 Plan originally envisaged that each of the three Garden Communities will deliver 2,500 new homes in the plan period up to 2033; i.e. 7,500 homes across North Essex. The majority of new housing development expected in the period between now and 2033 will still however come from sites that are already under construction or have already obtained planning permission and sites that are allocated for housing development in each of the authorities' Section 2 Local Plans.
- 1.4 The final part of the process for the preparation of a Local Plan, before it can be formally adopted, is the examination. The purpose of the examination is for a government-appointed Planning Inspector to ensure the Council has followed relevant legal and procedural requirements and to test the plan for its 'soundness' which includes ensuring that it is consistency with national planning policy. Key legal tests include ensuring the Council has complied with the legal duty to cooperate, the requirements for sustainability appraisal and requirements for community consultation. The 'tests of soundness' which are set out in the National Planning Policy Framework (NPPF) are:

- **Positively prepared** – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;
  - **Justified** – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;
  - **Effective** – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and
  - **Consistent with national policy** – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework.
- 1.5 In October 2017, the North Essex Authorities submitted their Local Plans to the Secretary of State to begin the formal process of examination. The Secretary of State then appointed an experienced Planning Inspector, Mr. Roger Clews, to undertake the examination for Section 1 of the plan.
- 1.6 Following the original examination hearings that took place in 2018, the Councils received three letters from the Local Plan Inspector containing interim feedback on the soundness and legal compliance of the Section 1 Local Plan. The first letter dated 8<sup>th</sup> June 2018 set out the Inspector's initial findings mainly in respect of legal compliance and the soundness of the Garden Community proposals. The second letter dated 27<sup>th</sup> June 2018 set out the Inspector's findings in respect of the need for new homes. The third letter dated 2<sup>nd</sup> August 2018 contained the Inspector's response to questions of clarification raised by the NEAs in respect of the Inspector's first letter. The content of these letters were all reported to Members in 2018.
- 1.7 Overall, the Inspector was satisfied in 2018 that the authorities had complied with the legal duty to cooperate and other legal and procedural matters and was also satisfied that the overarching employment and housing targets in the plan had been justified on the basis sound evidence. He also praised the authorities for their innovation and ambition in promoting three new Garden Communities in North Essex and stated that if carried out successfully it has the potential to provide for housing and employment needs not just in the current Plan period but well beyond it.
- 1.8 However, the Inspector found the evidence provided to support the Garden Communities was lacking in a number of respects. The main areas of concern related to:
- Transport infrastructure – in particular the lack of certainty over its practical delivery, timing, costs and funding;
  - Housing delivery – in particular the assumptions about how many new homes could realistically be built at the Garden Communities in the period up to 2033;
  - Employment provision – the lack of any indication as to how much employment land would be provided as part of the new Garden Communities;
  - Viability – in particular some of the assumption made in respect of transport infrastructure costs, land purchase and interest costs and contingency allowances.



- Delivery mechanisms - questions over the NEAs approach to delivering Garden Communities through the formation of a locally-led 'development corporation' and whether the development could be delivered through other alternative methods.
- Sustainability appraisal – in particular the objectivity of the appraisal and concerns that it was biased in favour of the NEA's preferred strategy.

1.9 In summary, the Inspector identified a number of key issues about the viability and deliverability of the Garden Community proposals and the way in which the authorities had selected the option of Garden Communities over other reasonable alternatives. Because of this, he was unable to endorse the Section 1 Local Plan as being sound. Instead, the Inspector provided the authorities with three options for how to progress a Local Plan towards adoption.

1.10 Option 1 would have involved removing Garden Communities from the Local Plan and proceeding with the examination of Section 2, so long as the Local Plan was reviewed again within 2-3 years (at which point the evidence in support of Garden Communities might have been stronger). Option 2 effectively meant undertaking more work to fill the gaps in the evidence and delaying the examination of Section 2 until the Inspector had been satisfied that the Garden Communities were deliverable and that Section 1 of the Plan was sound. Option 3 would have meant withdrawing the Local Plan and starting again.

1.11 On 22<sup>nd</sup> October 2018, the NEAs wrote to the Inspector to advise him that the Councils remained committed to using Garden Communities principles to secure the future housing requirements in the North Essex Authorities area and would provide the further evidence requested by the Inspector including evidence on:

- the availability of funding for the necessary strategic infrastructure;
- the financial viability of the proposed communities;
- the environmental effects, including transport issues;
- employment provision within the Communities (and elsewhere) to ensure housing growth is matched with economic growth; and
- continuing engagement with the local communities.

1.12 The Councils also committed to reviewing the 'Sustainability Appraisal' underpinning the choice of strategy in the Local Plan, ensuring that it considered a full range of reasonable alternatives to the Garden Communities, at a range of different sizes. Importantly, the Councils committed to reviewing all of the above evidence before submitting it to the Inspector and before any further consultation – to see whether any changes to the plan or the overall strategy were necessary.

1.13 Following this decision, the Councils worked together, and with expert consultants, to prepare a series of technical documents including an Additional Sustainability Appraisal (SA), evidence base documents and studies covering a range of topics that required further analysis and a series of suggested amendments to the Section 1 Plan. The list of further documents was as follows:

1. Additional Sustainability Appraisal of North Essex Local Plan Section 1;
2. North Essex Rapid Transit System for North Essex: From vision to plan;

3. Mode Share Strategy for the North Essex Garden Communities;
4. Build Out Rates in the Garden Communities;
5. North Essex Local Plans (Section 1) Viability Assessment Update;
6. Employment Provision for the North Essex Garden Communities;
7. North Essex Garden Communities Infrastructure Planning, Phasing and Delivery;
8. North Essex Authorities Infrastructure Order of Cost Estimate (41,000 homes);
9. HRA [Habitat Regulation Assessment] Report for North Essex Authorities Shared Strategic Section 1 Local Plan;
10. North Essex Authorities' Position Statement on Delivery Mechanisms';
11. North Essex Authorities' Position Statement on State Aid; and
12. Proposed amendments to the Publication Draft Braintree, Colchester and Tendring Local Plans: Section One.

1.14 These documents were endorsed by Members of all three Council's in June and July 2019 and were subsequently published for consultation for six-weeks between 19 August 2019 and 30 September 2019 to allow third parties the opportunity to consider both the suggested amendments and evidence and make any comments.

## **2. Further Examination Hearings**

- 2.1 Following the consultation, all of the representations (approximately 1,000 in total) were forwarded to the Inspector. Having considered the comments, the Inspector set the timetable for the resumption of examination hearings and published a set of 'Matters, Issues and Questions' (MIQs) identifying the main topics or 'matters' that the Inspector wished to discuss, with a series of questions under each matter. The NEAs and other participants in the examination (i.e. those who made representations) were invited to prepare and submit 'hearing statements' that responded, in writing, to the Inspector's questions. Officers from the NEAs worked together, with expert consultants where necessary, to produce the hearing statements that respond to all of the Inspector's questions.
- 2.2 The further hearing sessions took place in January 2020 at Colchester Community Stadium. At each session, the North Essex Authorities were represented by a lead Officer, supported by either Michael Bedford QC or Robert Williams of Counsel with specialist consultants where necessary.
- 2.3 The sessions were generally well attended by the public and other interested parties. The topics that attracted the most public interest were transport and the Sustainability Appraisal.
- 2.4 On the final day of the hearing sessions on 30<sup>th</sup> January the Inspector, in his closing remarks, explained the next stages of the process. He explained that, because the examination had already gone on for two years, he was keen to bring this stage of the process to a close and that he would write to the North Essex Authorities 'in a few weeks' to give his final view on the soundness of the Section 1 Local Plan and would not be inviting any further work which might delay the process further.

## **3. Inspector's May 2020 Findings**

- 3.1 On 15 May 2020, the lead Officers for the NEAs received the Inspector's letter setting out his further post-examination conclusions. Key conclusions from the Inspector's letter (attached as Appendix 1) are set out below, with references to relevant statements paragraphs.

#### Principle of Garden Communities

- 3.2 The Inspector recognises in (para 13) that *"the Plan's policies for the GCs [Garden Communities] are consistent with the NPPF's guidance on the way in which sustainable development can be achieved through the development of garden communities."* The principle of promoted Garden Communities as part of the Local Plan is therefore confirmed as acceptable.

#### Legal compliance

- 3.3 The Inspector has re-confirmed (para 21) that the NEAs have met the duty-top-cooperate in the preparation of the Section 1 Local Plan as well as the relevant procedural requirements with regard to consultation and submission.

#### Housing requirements

- 3.4 The Inspector has also re-confirmed that the housing requirements set out in Policy SP3 of the Plan (which include the requirement of 920 homes a year for Colchester) are still based on sound evidence. He states (para 47) *"I conclude that neither the population and household projections and employment forecasts published since June 2018 nor recent evidence from market signals indicate that there have been a meaningful change in the housing situation"* and *"Consequently, the Plan's housing requirement figures remain soundly based"*.

#### Habitats Regulation Assessment/RAMS

- 3.5 A judgement of the Court of Justice of the European Union in relation to the European Habitat Regulations required the NEAs to produce an update to the Habitats Regulation Assessment (HRA) for the Section 1 Local Plan. It also led the Councils, with agreement from Natural England, to put forward to the Inspector a number of suggested amendments to the wording of the Plan to ensure it complied with legal requirements arising from the judgement.
- 3.6 The suggested amendments included a new policy embracing the Essex Coast 'Recreational disturbance Avoidance Mitigation Strategy' (RAMS) as a means by which the Councils will meet with their legal requirements in considering, and where necessary mitigating, the direct and indirect impacts on internationally important wildlife sites (European Sites) arising from 'recreational disturbance' i.e. that arising as a result of increasing housebuilding and population growth.
- 3.7 The Inspector has concluded that the addition HRA work (undertaken by consultants LUC) has (para 56) *"adequately assessed the likelihood of significant effects arising from recreational activities, including by identifying appropriate zones of influence based on visitor surveys"*. He then concluded (para 59) *"Taking into account the mitigation measures, which as well as the RAMS include the proposed modifications to the Plan's policies, the NEAs are satisfied that there is sufficient certainty that the plan would not*

*adversely affect the integrity of any European site, alone or in combination. In the light of the above points, I consider that they are justified in taking that view.”*

- 3.8 The Inspector’s endorsement of RAMS as a means of fulfilling the requirements of the Habitats Regulations is helpful, both for the Local Plan, but also in giving weight to the RAMS Strategy in the determination of planning applications, including the approach to securing developer contributions from all new residential development. More details of RAMS are set out in the Planning Policy and Local Plan Committee report A5.

#### Sustainability Appraisal

- 3.9 In his 2018 letter, the Planning Inspector identified a number of shortcomings in the Sustainability Appraisal (SA) for the Section 1 Local Plan which the 2019 further SA sought to address. The Inspector has confirmed that, in undertaking the Additional SA (using consultants LUC) the NEAs have met the statutory requirements for consultation and submission of the relevant reports.
- 3.10 The Inspector has also confirmed that the methodology for, and approach to, the Additional SA was sound. In particular, he has agreed the threshold of 2,000 dwellings as the ‘cut-off’ for ‘strategic sites’ as being “a reasonable planning judgement” (para 71); has praised the list of alternative strategic sites tested as part of the assessment as “*impressively comprehensive*” (para 72); and has concluded, in response to objections from third parties to the NEAs decision to discount certain sites, that “*It may be that others would have made different judgements*”...“*but nothing I have heard or read indicates that any of the judgements made by the NEAs was unreasonable or irrational*”.
- 3.11 The Inspector also agreed with the ‘seven principles’ that the NEAs applied in determining which sites and which spatial strategy options should carry forward into the final stage of the assessment. He states (para 78) “*As the NEAs correctly note, attempting to assess every possible combination of every site taken forward into Stage 2 would be an unmanageable task. Devising principles to inform the selection of alternative spatial strategies is, therefore a reasonable way to proceed, providing of course that the principles themselves are sound.*” He then goes on to explain why each of the seven principles devised by Officers were reasonable and sound and concludes (para 89) that “*I see no basis on which to conclude that any reasonable alternative was included from the assessment*”.
- 3.12 In the approach to assessing the alternatives, the Inspector described Stage 1 of the assessment (para 90) as “*scrupulously fair*” with “*no sign of bias in favour of or against any of the sites*”. He also responded to concerns raised by Historic England about the lack of a detailed assessment of heritage impacts but concluding that (para 100) “*Historic England’s advice on site allocations is more applicable to the future DPDs [Development Plan Documents for the Garden Communities] than to the Section 1 Plan*” and, even with more detailed evidence, “*it is highly unlikely that the outcome of the Stage 1 assessment would have been any different*” (para 101). The Inspector also responded to concerns raised about the lack of detailed evidence on air quality, concluding that the approach to this issue was adequate at this stage.
- 3.13 Overall, the Inspector has concluded that the approach, methodology and decisions on selecting and discounting options in the Additional Sustainability were sound but that, in

coming to a judgement as to the most appropriate and sustainable strategy option for inclusion in the Local Plan, deliverability is a critical issue. He states (para 116) *“deliverability is critical to the justification of the Plan’s spatial strategy, including the proposed GCs”* [Garden Communities].

- 3.14 Later, in the concluding section of his letter, the Inspector acknowledges that whilst the Additional Sustainability Appraisal, in itself, was unable to conclude that any of the spatial strategy options, to the west or east of Colchester was the most sustainable option, the advantage of the strategy in the Section 1 Plan is that it provides clear direction to accommodate strategic growth over many decades to come. He says (para 255): *“For the NEAs, the ability of the proposed GCs to provide for long-term strategic growth is one of the key reasons for pursuing the Section 1 Plan strategy in preference to the alternatives, notwithstanding that some of the alternative options offer opportunities to deliver similar benefits.* He goes on (para 256), *“Consequently, **the Plan’s spatial strategy, which includes the three proposed GCs, would only be justified as the most appropriate strategy if it can be shown that each GC is deliverable, not just over the Plan period but over the long term**”*

#### Deliverability of the proposed Garden Communities

- 3.15 The Inspector’s letter contains very detailed consideration of the deliverability of the proposed Garden Communities that considers infrastructure requirements, the funding announced for relevant trunk road improvements, the scale of development that might or might be achievable without such improvements, the practical feasibility and the costs and commercial viability of Rapid Transit Systems (RTS). He also considers the likely rate at which houses can realistically be built at each of the Garden Communities and the likely demand and opportunity to deliver employment land in each of the three locations.
- 3.16 Turning to the details of viability, the Inspector, having considered all the factors above and a range of evidence and appraisals prepared on behalf the NEAs and other third parties, has also addressed various financial considerations including development costs, the realistic cost of financing and acquiring land, rates of contingency to be applied to the cost of major infrastructure schemes, the potential effects of inflations and the cost of borrowing, including the levels of interest that would accrue over the lengthy period of developing a Garden Community.
- 3.17 Without repeating the detail of the Inspector’s letter, the main conclusions he has reached can be summarised as follows:
- He considered that the NEAs were being over-optimistic in suggesting that the Garden Communities could achieve rates of development in excess of 300 homes a year in any of the three locations and, despite the evidence put forward to the examination, 250 homes a year is the prudent maximum that should be assumed. This means the developments will take significantly longer than the NEAs are suggesting, which affect the viability of development – particularly in relation to the ongoing costs of borrowing.
  - The costs likely to be involved in developing a Rapid Transit System (RTS) are likely to be at the higher end of the different ranges that were discussed at the examination, with a high level of contingency needing to be factored into the calculations. The NEAs have therefore been over-optimistic in thinking the costs could be lower.

- There is insufficient evidence to adequately demonstrate that Route 3 of the RTS between Braintree and Stansted and Route 4 between Braintree and the Colchester Braintree Borders Garden Community can be funded and delivered – meaning an important section of the RTS would be unlikely to happen.
  - The award of Housing Infrastructure (HIF) Funding for the A120/A133 link road east of Colchester and the widening and re-routing of the A12 at Marks Tey have been factored into the viability assessments, but a high level of contingency should be applied to the anticipated costs.
- 3.18 Taking all of the above into account to calculate the likely ‘residual land value’ (RLV) of each scheme (i.e. the amount of money a landowner can reasonably expect to receive in exchange for their land and the main measure of viability), the Inspector has concluded that only one of the three proposed Garden Communities is economically viable and deliverable – the Tendring Borders Garden Community. The Inspector states (para 233):

*“For the proposed Tendring / Colchester Borders GC, the Grant scenario assessment in the 2019 Supplementary Information, based on average delivery of 250dpa [dwellings per annum] with 40% contingency allowance, gives a residual land value of over £175,000/acre. This is well above the figure that I consider would constitute a competitive return to a willing landowner. This would allow sufficient financial headroom to overcome any concerns about the contingency allowance for the A120/A133 link road, or any additional costs associated with the link road or with RTS Route 1. I therefore consider that the viability of the Tendring / Colchester Borders GC has been demonstrated.”*

- 3.19 For the Colchester Braintree Borders Garden Community at Marks Tey however, the Inspector has concluded that the development is not viable and deliverable (para 234):

*“For the Colchester / Braintree Borders GC, on the other hand, the Grant scenario assessment, based on average delivery of 250dpa with a 40% contingency allowance, gives a residual land value of only around £24,500/acre. That is well below what I consider to be a competitive return to a willing landowner.”*

- 3.20 The Inspector’s conclusions on the West of Braintree Garden Community near Rayne are that viability is more marginal:

*“For the West of Braintree GC, the Reference scenario, based on 250dpa with a 40% contingency allowance, produces a residual land value of around £52,000/acre. I consider that this would place the development below, or at best, on the margin of viability.”*

#### Inspector’s conclusions on soundness

- 3.21 The three tests of soundness are set out in the National Planning Policy Framework and reproduced above.
- 3.22 Whilst the Inspector has agreed that the Section 1 Plan has been ‘positively prepared’, his letter identifies continued issues with the viability and deliverability of the proposed Colchester Braintree Borders Garden Community and the West of Braintree Garden

Communities which bring into question the Plan's performance against the requirements to be 'justified', 'effective' and 'consistent with national policy'.

- 3.23 The Inspector's overall conclusions on the soundness of the Section 1 Plan are summed up in paragraphs 257 to 261 as follows:

*157. "Viability appraisal shows that, with an appropriate 40% contingency allowance on transport and utilities infrastructure, the proposed Colchester / Braintree GC would not achieve a viable land price, and that the proposed West of Braintree GC is below, or at best is at the very margin of, financial viability, contrary to advice in the PPG [Planning Practice Guidance]. On this basis, neither GC is deliverable.*

*158. For separate reasons, given in paras 143-151 above, neither RTS Route 3 nor RTS Route 4 has been shown to be deliverable. The proposed West of Braintree GC depends on Route 3 for its public transport links to destinations outside the GC, and on Route 4 for links to places east of Braintree. Without those routes, apart from the few journeys that might be possible on foot or bicycle, the car would be the only realistic choice for travel beyond the GC itself.*

*159. Housing development at the proposed Colchester / Braintree Borders GC is intended to help meet the housing needs of both Colchester borough and Braintree district, and there is a strong commuting relationship between the two local authority areas. Notwithstanding the links to other destinations offered by RTS Route 2 and by rail services from Marks Tey station, the GC would depend on Route 4 for its public transport links westward to Braintree.*

*160. In these circumstances, the fact that RTS Routes 3 and 4 have not been shown to be deliverable is entirely at odds with the Plan's aspirations for integrated and sustainable transport networks. Even if the A120 dualling scheme has a good prospect of being delivered as part of the RIS [Road Investment Strategy] 3 programme, not to provide the necessary public transport connections from these two GCs would directly conflict with the NPPF's advice that the transport system needs to be balanced in favour of sustainable transport modes.*

***161. For the foregoing reasons, therefore, I find that the proposed Colchester / Braintree Borders and West of Braintree GCs are not justified or deliverable. Consequently, the Plan's spatial strategy, and thus the Plan itself as submitted, are unsound."***

- 3.21 In conclusion, the Inspector has found that the Section 1 Local Plan, in its current form, is unsound and could therefore not proceed to adoption without some significant changes.

#### Options for progressing the Local Plan

- 3.22 Although the Inspector has very clearly come to the view that the Section 1 Local Plan, in its current form is unsound because of the viability and deliverability issues at the Colchester Braintree Borders and West of Braintree Garden Community, he goes on in his letter to explain that the Tendring Colchester Borders Garden Community is deliverable and that there could be a way of progressing the Local Plan towards adoption. He states (para 264):

*“Based on the NEAs’ current housing trajectory and taking into account my conclusions on the rate of housing delivery, the Tendring / Colchester Borders GC would deliver over 2,000 dwellings during the Plan period. That would make a worthwhile contribution to meeting the Plan’s overall housing requirement. Based on the latest housing supply figures, it would represent an over allocation of approximately 5% against the overall requirement. Whether that level of over-allocation is sufficient, and whether the other sources of housing supply will come forward as the NEA expect, are matters to be considered in the Section 2 plan examinations”.*

3.23 In essence, the Inspector is saying that even if the Colchester Braintree Borders and the West of Braintree Garden Community do not happen, there is still a reasonable prospect that, on the strength of the Tendring Colchester Borders Garden Community alone, the overall housing requirement will still be met (subject to consideration of the Council’s individual Section 2 Plans) and potentially exceeded, by around 5%.

3.24 In paragraph 266 of his letter, the Inspector states:

***“I therefore conclude that development of the Tendring / Colchester Borders GC would enable the delivery of sustainable development in accordance with the NPPF’s policies. If the unsound Colchester / Braintree Borders and West of Braintree GC proposals are removed from the Plan, the Plan is capable of being made sound.”***

He then (para 267) states:

**“In the light of this conclusion it appears to me that the NEAs have two main options:**

- **To propose and consult on main modifications to remove the Colchester / Braintree Borders and West of Braintree GC proposals from the Plan; or**
- **To withdraw the Plan from examination.**

3.25 The Inspector has asked that the North Essex Authorities advise him, as soon as we are able to, which of the options (or any alternative course of action) we wish to pursue. This will then enable a timescale for the remainder of the examination to be developed, should we select the first option.

#### Officer consideration of the options

3.26 Officers across all three North Essex Authorities have given careful and urgent consideration to the Inspector’s two suggested options in order to make a recommendation to Councillors.

3.27 The benefits of ‘Option 1’ (to remove two Garden Communities from the Plan and consult on this and other modifications) include:

- A clear way forward for the Local Plan that avoids the need to start the plan-making process from scratch under the requirements of the new National Planning Policy Framework, and which ensures all three authorities can progress to the examination of their individual Section 2 Plans.



- The opportunity to ‘lock down’ the housing and employment figures and move swiftly towards getting a plan in place and thus giving all three authorities an up to date policy framework that will protect their areas from speculative, unwanted and poor quality development.
- The ability for the authorities to review their Local Plan, either on a joint or individual basis within five years of adoption, giving more time for them to consider whether or not to bring forward or re-introduce any strategic development proposals or new Garden Communities to meet longer-term housing and employment needs post 2033. Those reviews would be carried out under the relevant national policy framework and plan-making guidance in place at that time.
- Ensuring that all the investment in time and resources putting together the Local Plan has not been wasted and is still put to good use in enabling a plan to progress.
- This approach is likely to be supported by communities and campaign groups who were in strong opposition to the Garden Communities, such as CAUSE – who were in particularly strong (and effective) in their opposition to the Colchester Braintree Borders Garden Community.

3.28 The disadvantages of Option 1 include:

- The removal of two of the three Garden Communities from the Local Plan will no doubt lead to objections, to the modifications, from the landowners and developers who were promoting those schemes and the possibility of legal challenge, if those parties believe there are grounds for such a challenge.
- It leaves the three authorities with fairly marginal over-allocation of housing land which means that housing supply will have to be kept under very close review in the years between adoption of the plan and the first review. The authorities will have to make sure they allocate sufficient land in their Section 2 Local Plans because if any of the authorities find themselves in a position where they cannot demonstrate a five-year housing supply, it could leave them vulnerable to speculative housing applications.

3.29 Officers are strongly of the view that the advantages of Option 1 clearly outweigh the disadvantages.

3.30 Turning to Option 2 (withdraw the Plan and start again), the advantages are:

- Opportunity for a complete fresh start to the plan making process (jointly or individually), under the guidance in the new version of the NPPF and with the benefit of the Inspectors findings and some of the evidence that has been prepared. Those aggrieved by the Tendring Colchester Borders Garden Community, might see this as advantageous.

3.31 The disadvantages of Option 2 include:

- Continuation of the ‘policy vacuum’ in which Local Plan policies are out of date and the authorities (particularly Braintree and Tendring) remain vulnerable to speculative,

unwanted, potentially poor developments and 'planning by appeal' for at least another three years.

- Significant cost, to the taxpayer, in having to start the plan making process from scratch, including considerable evidence gathering, consultation exercises – and a waste of much of the work that has already been undertaken.

3.32 Officers are strongly of the view that the disadvantages of Option 2 clearly outweigh the benefits.

3.33 Officers therefore recommend that the Council continues with the present local plan process, as previously agreed, with the proposed modifications being published for consultation.

#### **4. Modifications**

4.1 Following receipt of the Inspector's letter, Officers from the NEAs asked the Inspector to advise on the specific 'modifications' he would likely recommend if the Councils' agree to proceed with his first option to enable these to be considered by the relevant Committees. Many of the draft modifications set out in Appendix 2 reflect the suggested amendments that the Committee considered and agreed for consultation in 2019. The most notable of the additional modifications being indicated by the Inspector are those that reflect the removal of two of the three Garden Communities from the plan.

4.2 The Inspector has specifically advised as to the 'main modifications' required to make the Section 1 Plan sound i.e. modifications that represent fundamental changes to the policies and proposals in the plan – whereas modifications deemed not to constitute 'main modifications' i.e. minor modifications or consequential changes to the supporting text within the plan are at the discretion of the Councils and are mainly in line with those already considered and agreed by the Committee in 2019.

4.3 The detailed schedule of draft modifications is attached as Appendix 2 to this report. The main modifications relate mostly to the deletion of Policies SP9 and 10 from the Section 1 Plan which set out the requirements for the West of Braintree and Colchester Braintree Borders Garden Communities that have been found not to be sound. Of the policies to remain in the modified plan, there are notable modifications proposed for Policies SP2, SP4, SP5, SP6 and SP7 along with the proposed addition of a new Policy SP1A in relation to the 'Recreational disturbance Avoidance Mitigation Strategy' (RAMS).

4.4 In summary, the main modifications include:

- Removal of the West of Braintree and Colchester Braintree Borders Garden Communities from the policies and associated maps and diagrams in the Section 1 Local Plan and any other references to those developments in the text of the plan.
- A new policy SP1A on 'Recreation disturbance Avoidance and Mitigation Strategy' (RAMS) setting out how the impacts of new development on internationally important

wildlife sites will be avoided and mitigated in line with the European Habitat Regulations.

- Modifications to Policy SP2 'Spatial Strategy for North Essex' to refer to just one Garden Community – the Tendring Colchester Borders Garden Community.
- Modifications to Policy SP4 'Providing for Employment' to update the employment land requirements for each of the three Councils to reflect the latest evidence, including the requirement for Tendring for between 12 and 20 hectares of new employment land in the plan period to 2033.
- Modifications to Policy SP5 to refer specifically to the 'Tendring Colchester Borders Garden Community' and to include a new section (E) aimed at ensuring there is sufficient capacity in the water supply and waste water infrastructure to serve the development.
- Modifications to Policy SP6 'Place-shaping Principles' to include specific requirements in regard to the protection of internationally important wildlife sites which, depending on the findings of ongoing survey work, might include the creation of a new habitat to offset and mitigate any impacts arising as a result of the development.
- Modifications to Policy SP7 to refer specifically to the 'Development and Delivery of a New Garden Community in North Essex' (as opposed to three) and to state specifically that the Tendring Colchester Borders Garden Community will deliver between 2,200 and 2,500 homes and 7 hectares of employment land within the plan period to 2033 (as part of an expected overall total of between 7,000 and 9,000 homes and 25 hectares of employment land to be delivered beyond 2033) and provision for Gypsies and Travellers.
- Further modifications to Policy SP7 to explain that a Development Plan Document (DPD) will be prepared for the garden community containing policies setting out how the new community will be designed, developed and delivered in phases; and that no planning consent for any development forming part of the garden community will be granted until the DPD has been adopted.
- Modifications to Policy SP8 'Tendring / Colchester Borders Garden Community' to state that the adoption of the DPD will be contingent on the completion of a 'Heritage Impact Assessment' carried out in accordance with Historic England, which will inform the content of the DPD.
- Modifications to Policy SP8 to explain how housing delivery for the garden community, irrespective of its actual location, will be distributed equally between Tendring District Council and Colchester Borough Council when it comes to counting house completions and monitoring delivery against each of the Councils' housing targets.

- Modifications to Policy SP8 also requiring that the planning consent and funding approval for the A120-133 link road and Route 1 of the rapid transit system are secured before planning approval is granted for any development forming part of the garden community.
- Other modifications to Policy SP8 emphasising the need for development at the garden community to achieve an efficient use of water, manage flood risk, avoid adverse impacts on internationally important wildlife sites arising from sewerage treatment and discharge, conserve and enhance heritage assets and their settings, and to minimise adverse impacts on sites of international, national and local importance for ecology.
- Finally, modifications to Policy SP8 to require the allocation of land within the garden community to accommodate expansion of the University of Essex.

- 4.5 Officers have also proposed additional modifications including one that provides a policy framework for seeking to recover the Housing Infrastructure Grant to the extent that that is appropriate and viable.
- 4.6 If the Councils agree to proceed with the current Local Plan process and to consult on main modifications, Officers will make a formal request to the Inspector to issue a finalised version of the schedule which is to be published for consultation. Officers are not expecting the Inspector's finalised schedule of modifications to be materially different from the draft in Appendix 2.

### **Implications of the Heathrow Airport case**

- 1.1 Before he issued his letter, the Planning Inspector received correspondence in the form of a paper from Ms. Pearson of CAUSE and Mr. O'Connell, both participants in the Local Plan examination, highlighting the February 2020 decision of the Court of Appeal in relation to Heathrow Airport and expressing their view on the implications for the Section 1 Local Plan.
- 1.2 In that decision, the Court of Appeal ruled on the proposed expansion of capacity at Heathrow Airport through the addition of a third runway, as part of the 'Airports National Policy Statement: new runway capacity and infrastructure at airports in the south east of England' (the 'ANPS'). The ANPS designated by the then Secretary of State for Transport in June 2018 was the subject of a number of legal challenges and the Court of Appeal ruled, on February 2020, that the expansion plans for a third runway at Heathrow were unlawful. This is because the government had not taken into account the UK's commitment to the Paris climate agreement or the full climate change impacts of the proposal.
- 1.3 Ms. Pearson and Mr. O'Connell have suggested, in their paper, that the Section 1 Local Plan might be liable to legal challenge for similar reasons and therefore the Inspector has asked the NEAs to provide their view on the implications of the judgement.

- 1.4 Officers have consulted legal firm Dentons (advisers to the NEAs throughout the examination process) and consultants LUC (authors of the Additional Sustainability Appraisal and Habitats Regulation Assessment) and a letter is being prepared for the Inspector's consideration which responds to the issues raised and explains how climate change has been adequately taken into account through the preparation and examination of the Section 1 Local Plan. Both the paper from Ms. Pearson and Mr. O'Connell and the NEAs letter in response will be available in due course on the Braintree District Council examination website.



14<sup>th</sup> July 2020

<b>Report of</b>	Assistant Director: Place and Client Services	<b>Author</b>	Laura Chase
<b>Title</b>	Tendring Colchester Borders Garden Community		
<b>Wards affected</b>	All wards		

## 1. Executive Summary

- 1.1 The North Essex Authorities which include Braintree, Colchester and Tendring Councils have now received the Inspector's report outlining his views on the soundness of each authority's Section 1 Local Plan (as discussed in a separate report on this agenda). While the Inspector has concluded that he did not find the Colchester Braintree Borders and West of Braintree Garden Communities to be deliverable, he did conclude that development of the Tendring/Colchester Borders Garden Community (TCBGC) would enable the delivery of sustainable development in accordance with the National Planning Policy Framework's policies.
- 1.2 On this basis, Colchester and Tendring propose to continue with the next stages of plan-making for TCBGC, subject to the decision of the Committee on the Local Plan item on this agenda. The next stage will involve the preparation of a Development Plan Document (DPD) to guide development. The DPD will provide the next level of detail required to progress the overall high-level Garden Community principles mandated by Section 1. Adoption of the DPD will entail joint working between the councils, in consultation with stakeholders at all stages of plan development. It is expected that the DPD will be a joint planning document adopted by both councils.
- 1.3 An initial consultation on Issues and Options was held on TCBGC from November 2017 - January 2018. The study work and responses from that consultation form a starting point for the next phase of work, bearing in mind the changes during the intervening period. In addition to Section 1 Local Plan developments, key amongst the changes was the Councils' successful bid for £99K in Housing Infrastructure Funding for a A120/A133 link road and a Rapid Transit Scheme to support the Garden Community. Work undertaken to inform the HIF projects has been carried out with the requirements of the Garden Community and its DPD in mind, so studies and masterplanning completed for these essential infrastructure projects will feed into the DPD process.
- 1.4 The Councils will work together to commission further evidence base and masterplanning work required to support the DPD. As with masterplanning work carried out for the Issues and Options stage, work will include focused consultation with stakeholders and existing communities in the vicinity of TCB GC.

- 1.5 The precise timetable for the DPD is not yet fixed but the Local Development Scheme will be brought back to this Committee as required for scrutiny, with adoption currently programmed for 2022.

## **2. Recommended Decisions**

- 2.1 To note the proposals for preparation of a Development Plan Document for the Tendring Colchester Borders Garden Community.

## **3. Reason for Recommended Decision**

- 3.1 To facilitate adoption of a DPD for the Tendring Colchester Garden Community in order to provide a robust and sustainable basis for guiding its future growth and development.

## **4. Alternative Options**

- 4.1 The Council could decide not to proceed with a Development Plan Document for the Tendring Colchester Borders Garden Community; however, this would leave its development without a clear framework for future growth and direction.

## **5. Background Information**

- 5.1 Development based on Garden Community principles forms a core element of the Section 1 Local Plan jointly submitted by Braintree, Colchester and Tendring Councils. While the Inspector has concluded that he did not find the Colchester Braintree Borders and West of Braintree Garden Communities to be deliverable, he did conclude that development of the Tendring/Colchester Borders Garden Community (TCBGC) would enable the delivery of sustainable development in accordance with the National Planning Policy Framework's policies.
- 5.2 The progression to adoption of Section 1 of the Local Plan is discussed in a separate report to this Committee. As the report notes, 'Confirmation of the soundness of the Tendring Colchester Borders Garden Community should also allow Tendring District Council and Colchester Borough Council to work together on the preparation of a 'Development Plan Document' (DPD) setting out more detailed parameters for the Garden Community.'
- 5.3 Section 1 Policy SP7 (Development and Delivery of a New Garden Community in North Essex) provides that '*A Development Plan Document (DPD) will be prepared for the garden community containing policies setting out how the new community will be designed, developed and delivered in phases, in accordance with the principles in paragraphs i-xiv below. No planning consent for any development forming part of the garden community will be granted until the DPD has been adopted.*' (Main Modification version)
- 5.4 More specifically, SP8 (Tendring/Colchester Borders Garden Community) provides that '*The Development Plan Document (DPD) required by Policy SP7 for the Tendring Colchester Borders Garden Community will define the*



*boundary of the garden community and the amount of development it will contain.'* (Main Modification version). The policy also specifies that the DPD must be contingent on the completion of a Heritage Impact Assessment; be produced in consultation with the local community and stakeholders; include a three dimensional indication of the urban design and landscape parameters that will be incorporated into any future planning applications; and a phasing and implementation schedule for necessary infrastructure.

5.5 In line with the above Local Plan objectives, Colchester and Tendring Councils have previously carried out initial work on Issues and Options for TDBG. An initial consultation on Issues and Options was held on TDBG from November 2017-January 2018. This document posed a series of questions on how the DPD should best address the following 10 defining principles of the North Essex Garden Communities Charter:

- Green Infrastructure
- Integrated and Sustainable Transport
- Employment Opportunity
- Living Environment
- Smart and Sustainable Living
- Good Design
- Community Engagement
- Active Local Stewardship
- Strong Corporate and Political Public Leadership
- Innovative Delivery Structure

The study work and responses from that consultation form a starting point for the next phase of work, bearing in mind the changes during the intervening period.

5.6 Work necessary to underpin the delivery of required transport infrastructure for TDBG has been aided by the successful bid made by Essex County Council in August 2019 for £99K from the Housing Infrastructure Fund. As HIF funding is intended to enable housing delivery, the funding was awarded on the basis that it will provide capacity and access to enable residential developments in TDBG. The two components of this bid were:

- A new link road running east of Colchester between the A120 and the A133 to provide greater connectivity into the proposed new development; and
- Rapid Transit development funding a route from TDBG via University of Essex into Colchester

5.7 The schemes will address a package of transport and access matters, enabling early implementation of sustainable transport options to stimulate behaviour change and address highway capacity constraints in east Colchester and west Tendring. ECC carried out a public consultation on possible options for the link road and RTS in November – December 2019. Following a review of consultation responses, ECC Cabinet approved a preferred route for the link road at its 26 May 2020 meeting; Option 1C, which accorded with the view of

the CBC response on options for the link road. ECC Cabinet also agreed to develop further analysis of options for RTS routing through Colchester.

5.8 A wide range of evidence base work will be required to support the DPD. The extent of work required will depend on the additional detail necessary on top of study work completed for the Colchester and Tendring Local Plans. In general, Section 1 work can be assumed to have addressed authority-wide issues of impact, context and need, but further work for TCBGC will be required to address Garden Community specific issues as follows:

- Housing – detailed analysis required of tenure split, affordability, Gypsy and traveller requirements, accessibility provision, and housing standards.
- Employment – identification of particular types of employment required to maximise links with University and potential of Garden Community model for new working arrangements
- Centres – analysis required of the role of Garden Community centres, and impact on other centres.
- Green Infrastructure – specific analysis required of level and types of provision, accessibility and relationship to surrounding area
- Heritage – Heritage Impact Assessment required providing detailed assessment of impact on existing heritage assets
- Health – Health Impact Assessment required providing a comprehensive approach to health and well-being that considers design and infrastructure in the context of active lifestyles, prevention, use of digital technology, and co-location of health facilities with other community facilities
- Sustainable Movement – Building on work carried out to support HIF, modelling work is needed analysing measures that will lead to modal shift away from car-based movements to other sustainable modes including walking, cycling and public transit.
- Infrastructure Delivery Plan – detailed analysis of physical, social and environmental infrastructure required to support each phase of development
- Viability – viability work will need to analyse proposal in the context of the chosen delivery model and the need to address Garden Community principles such as long-term stewardship.
- Sustainability and Climate Change measures - as an exemplar scheme for Garden Communities, TCBGC will be expected to adopt best practice across the board in all aspects of sustainable design, construction and in climate change adaptation measures. The DPD will need to be supported by evidence for ambitious targets and innovative projects.
- Minerals Resource Assessment – ensure safeguarded minerals sites are appropriately safeguarded and/or worked prior to development.
- Integrated Water Management Study – Phase 1 of the IWMS provided a high-level analysis of water supply, wastewater services and flood risk management for the three Garden Communities originally proposed in the Section 1 Local Plan. Phase 2 study is programmed

to identify and determine site specific water management measures which can serve to minimise demand as far as possible and set out how surface water and flood risk can be managed on site in an integrated way.

- Sustainability Appraisal and Habitats Assessment work will inform all stages of plan development to ensure the DPD addresses all required sustainability and habitats protection requirements.

- 5.9 The work above largely needs to be completed by consultants due to its specialised nature, but clearly additional officer resources will need to be devoted to overall project co-ordination, consultant management, and public consultation. Colchester and Tendring officers are collaborating on an agreed work programme, timescale and budget. To avoid duplication and maximise efficiency, project co-ordination is also including identification of work required to support the examination of Section 2 policies and allocations as well as work being completed further to the HIF link road and RTS work.

## **6. Equality, Diversity and Human Rights implications**

- 6.1 An Equality Impact Assessment has been prepared for the Local Plan, and is available to view by clicking on this link:-  
<https://cbccrmdata.blob.core.windows.net/noteattachment/CBC%20-%20How%20The%20Council%20Works%20-%20Policy%20and%20Corporate%20Equality%20Impact%20Assessments%20-%20Local%20Plan.pdf>

## **7. Strategic Plan References**

- 7.1 The development of a robust planning framework for the Tendring Colchester Garden Community addresses all of the GROW objectives of the Strategic Plan as it will underpin the successful delivery of an exemplar development which would help make Colchester an even better place to live, work and visit.

## **8. Consultation**

- 8.1 Consultation on the DPD will be carried out in line with the Council's Statement of Community Involvement and relevant national guidance as contained in the NPPF and The Town and Country Planning (Local Planning) (England) Regulations 2012.

## **9. Publicity Considerations**

- 9.1 The DPD is likely to generate publicity for the Council when consultation is undertaken.

## **10. Financial implications**

- 10.1 Development of a DPD will be undertaken within a budget allocated for its production, including updating of evidence documents, consultation and

examination. The budget considered by the 8<sup>th</sup> July Cabinet and scheduled to be considered by the 15<sup>th</sup> July Council provides for £250,000 for this purpose for 2020/21. Precise allocation of costs as the project develops will be contingent on the development model chosen, ie the Councils will assume more costs if they take on the lead developer function.

## **11. Health, Wellbeing and Community Safety Implications**

- 11.1 Adoption of a new DPD will address the health, wellbeing and community safety implications of creating sustainable communities

## **12. Risk Management Implications**

- 12.1 The adoption of the DPD will help ensure that the Council's planning policies for the Garden Community are robust and up-to-date and will help to reduce the risk of inappropriate development being permitted.

14 July 2020

<b>Report of</b>	Assistant Director: Place and Client	<b>Author</b>	Laura Chase
<b>Title</b>	Statement of Community Involvement – Coronavirus update		
<b>Wards affected</b>	All		

## 1. Executive Summary

- 1.1 This report reflects the need to revise planning related public access and involvement procedures contained in the Council's Statement of Community Involvement (SCI) in the light of Government guidance on coronavirus implications. It is intended to publish a covering update note initially as set out in Appendix 1 with the changes incorporated into the document in due course.

## 2. Recommended Decision

- 2.1 To agree the revisions made to the Statement of Community Involvement as shown in Appendix One to reflect the specific requirements arising from national guidance and procedures on dealing with coronavirus implications.
- 2.2 To publish the updated Statement of Community Involvement on the Council's website.
- 2.3 To delegate to the Lead Officer: Planning, Housing & Economic Growth authority to make changes to the SCI if circumstances change to allow plan making and decision making to continue.

## 3. Reason for Recommended Decision

- 3.1 To ensure Council procedures on planning and community involvement are modified to align with current Government guidance.

## 4. Alternative Options

- 4.1 The Committee could decide not to update the Statement of Community Involvement, but this would conflict with the latest national regulations on coronavirus implications and may undermine plan making and decision making in the borough.

## 5. Background Information

- 5.1 A Statement of Community Involvement (SCI) is a document required by Section 18 of the Planning and Compulsory Purchase Act 2004 which sets out what consultation will take place with the community on planning policy documents and planning applications.
- 5.2 The Council approved the latest version of the Colchester SCI on the 13 September 2018. It is available on the [Council website](#). The 2018 update included information on Neighbourhood Planning compliant with regulations under the Neighbourhood Planning Act 2017 and also included minor amendments on community involvement for the development management process.

5.4 The Government has been aware that its latest guidance on measures required to address Covid-19, has implications for the ability of authorities to comply with policies set out in their SCIs. The Government has addressed the need to modify consultation requirements for an interim period in the Flexibility of Local Authority Meeting Regulations 2020 and in modifications to Planning Policy Guidance (published 13 May 2020). In recognition of social distancing requirements and the current need to limit public access to public buildings, new Government guidance removes the requirement to provide for the availability of hard copies of documents in council offices and libraries. This is line with the Government's wish to increase the use of electronic alternatives to help speed up the planning system. Site notice requirements remain, but local authorities are given more discretion to use alternative electronic means to ensure relevant parties are notified.

5.5 The revised Plan Making PPG states at paragraph 77:

*Where any of the policies in the Statement of Community Involvement cannot be complied with due to current guidance to help combat the spread of coronavirus (COVID-19), the local planning authority is encouraged to undertake an immediate review and update the policies where necessary so that plan-making can continue.*

More specifically in relation to SCIs, the Plan Making PPG states at paragraph 78:

*There is no requirement in legislation for local planning authorities to consult when reviewing and updating their Statement of Community Involvement, although it is good practice for authorities to inform the public of their intentions to update this document and of the changes that have been made. It is also good practice to make clear that the changes are only temporary whilst restrictions relating to COVID-19 are in place.*

5.5 The SCI as currently written allows the Council to make changes to it in response to new requirements: Paragraph 10.1 provides that *the SCI provides flexibility to allow for appropriate changes in our approach to community involvement. Comments received on the quality or effectiveness of our consultation will be considered and used to inform future practice. If significant changes are required to meet new circumstances or legislation, a review of the Statement of Community Involvement will be undertaken.*

5.6 Given these considerations, the Council has now published a covering table at the front of the SCI highlighting changes to the document covering the following points (Attached as Appendix 1):

- 1) **Availability of hard copies of adopted documents and committee reports:** The SCI currently contains several references noting that consultation documents and committee reports will, in addition to online, be available as hard copies at the Council offices and libraries (Table following paragraphs 3.7 Development Plan Documents and 4.9 Neighbourhood Plans; 8.3 Committee Reports, 7.17 Customer Service Centre).

The update table at the front of the SCI highlights that documents will now be published on the website, and that hard copies of Planning Policy documents will be available whenever possible and in the most accessible location.

Colchester Library is due to reopen on the 6<sup>th</sup> July 2020 and will be used to hold hard copies of documents. Further libraries within the Borough are expected to reopen from 14<sup>th</sup> July and may be more appropriate to use, along with other publicly accessible buildings, particularly for Neighbourhood Plans. The Council is working to expand its range of consultation methods to incorporate both the latest innovations in the use of social media and options for reaching those without access to the internet.

It may be the case that public buildings are closed again in future and if that situation arises, Officers will seek to provide hard copies on request. This maybe on a loan basis to avoid unnecessary printing.

Whilst no face to face events are proposed during this time, officers will remain available via phone, email and virtual meeting to discuss any consultation with local residents and interested groups.

- 2) **Public speaking arrangements for committees:** Arrangements for public speaking at committees outlined in Para 8.4 of the SCI have been affected by changes to procedures arising from the introduction of virtual meetings. The update table refers to the revised public comment arrangements detailed in the 'Public Participation at all Public Meetings' section of the Council's Remote Meetings Procedure Rules for the 2020/21 Municipal Year. These measures continue to be monitored and reviewed; these will be updated accordingly. Measures for Local Plan Committee and Planning Committee may vary to other Council meetings.

The Have Your Say! Process for Planning Committee is as follows:

- Members of the public may submit written questions/statements by 12 noon the working day before the meeting date. In addition to the questions/statement the following information is required: name, email address, application number and site location.
- Questions/statements should be confined to material planning issues which may be taken into consideration in reaching a decision.
- One objector and one supporter will be able to make representations on each application. In circumstances when more than one person wishes to make representation either in opposition or support; the Chairman will decide which one representation will be permitted in accordance with the following criteria:
  - Is the representation made on behalf of a wider group (i.e. Parish Council or Residents Group);
  - Proximity of the person making the representation to the application site;
  - The timing of the submission.
- If you are appointed to speak you will receive an email confirmation including instructions on how to join the meeting.
- The chairman will announce the names of those wishing to make representations to the Committee members.
- A three minute period (equates to 500 words) is allowed for members of the public to ask a question or make a statement by audio or video link. Once the time has elapsed, the person will be required to leave the meeting. The remainder of the meeting can be observed online.
- Visiting Councillors will be allowed a five minute period to speak.
- The Chairman has discretion to disallow or terminate any public participation which is scurrilous, vexatious, improper, irrelevant or otherwise objectionable.

The Have Your Say! Process for Local Plan Committee is as follows:

- Members of the public wishing to make representations will need to register by 12 noon the working day before the meeting date with their name, email address, and whether the representation is a general matter or related to an item of business.
- People indicating that they want to speak will receive an email to confirm whether they will be able to and instructions of how to join the meeting.
- All speakers will be heard at the start of the meeting;

- Each speaker is limited to 3 minutes (500 words maximum) with one submission per meeting;
- The Have Your Say! Portion of the meeting will be limited to 30 minutes (10 speakers) per meeting;
- Visiting Councillors can speak in addition to this allocation, limited to 5 minutes each per meeting.

More information is available on the Councils website - [Have Your Say!](#)

**3) Neighbourhood Plans:** The update page notes that the Council continues to provide support to Neighbourhood Plan groups. They, along with the Council, will need to broaden their consultation methods in response to Covid-19 and the increasing use of digital methods. In particular, consultation on the Tiptree Neighbourhood Plan has been affected by the Covid-19 crisis. Consultation on their publication Neighbourhood Plan had commenced for a six-week period from 20 April to 1 June 2020. This consultation, however, was withdrawn in light of the need to revisit consultation methods which could not involve provision of hard copies. While hard copy requirements have now been modified, Colchester Council and the Neighbourhood Plan group are ensuring best practice is followed in consultation methods. The Tiptree Neighbourhood Plan consultation has now recommenced for a seven week period from 22 June to 10 August 2020, allowing additional time for postal notifications of the consultation to arrive to all residents and businesses within the Tiptree parish.

**4) Site Notices and Visits:** The update includes the current process for site notices and site visits. This will require a greater level of cooperation with applicants in order to ensure site notices are publicised where required and site photographs are provided. Although it is outlined that this process will continue to be reviewed as risk levels change.

**5) Planning Appeals:** The update refers to alternative digital and written means being developed to progress planning appeals. The Planning Inspectorate did pause hearings and public inquiries and as a result there have been some delays and changes to procedures. They are still postponing physical hearings and inquiries but are seeking to run inquiries and hearings in a virtual manner where possible.

**6) Public meetings:** The SCI does not contain a specific commitment to any form of public meetings but does encourage developers to host pre-application consultation events and notes the Council's willingness to participate as required in Parish and Town Councils. The update page notes that no physical public meetings are being held at the moment, that information is available online and where invited to virtual meetings using web based technology the Council will participate where necessary and possible. For example, a virtual meeting has been held with Tiptree Parish Council in relation to the Neighbourhood Plan.

- 5.7 The SCI will be kept under review and modified as required to take account of both the latest health and safety requirements and adoption of new consultation methods. It may be necessary to revise the SCI at short notice, but any changes will be brought to the first available Local Plan Committee following such changes to enable scrutiny and review.

## **6. Equality, Diversity and Human Rights implications**

- 6.1 An Equality Impact Assessment has been prepared for the Local Plan, and is available to view by clicking on this link:- <http://www.colchester.gov.uk/article/12745/Policy-and-Corporate>



## **7. Strategic Plan References**

- 7.1 The Council's Strategic Plan 2018 – 2021 includes a key priority concerning Responsibility. The Statement of Community Involvement provides an opportunity under this theme for residents to get involved in their communities through the planning process.

## **8. Consultation and Publicity**

- 8.1 The required updating to the SCI is being publicised via this report and on-line publication in line with Government advice that while there is no requirement to have a formal consultation on the SCI, *'it is good practice for authorities to inform the public of their intentions to update this document and of the changes that have been made'*.

## **9. Financial implications**

- 9.1 There are no financial implications for the Council

## **10. Community Safety Implications**

- 10.1 There are no community safety implications for the Council.

## **11. Health and Safety Implications**

- 11.1 There are no health and safety implications for the Council.

## **12. Risk Management Implications**

- 12.1 Adopting the Statement of Community Involvement will reduce the risk of the Council failing to adhere to the most recent regulations.

## **Appendices**

Appendix One: Statement of Community Involvement Update sheet

## Appendix One

### Colchester Local Plan Statement of Community Involvement (SCI) July 2020 Update

This Statement of Community Involvement sets out Colchester Borough Council's strategy for effective community participation in planning matters. Please note that due to the Coronavirus outbreak, the Council may not be able to follow all of the commitments set out in this document. The Council is committed to keeping essential services running, but the way we deliver some services has changed. This is to protect our community and staff from unnecessary travel and social contact, in line with Government advice and guidance. The table below sets out key commitments in this document where the way we provide our service has changed. These changes are temporary although it is unknown how long these changes will apply.

We will continue to monitor the situation and will update this document as required. For further information about how Council services are affected, please visit our website at <https://www.colchester.gov.uk/coronavirus/residents/planning-services-changes/>

For further information regarding guidance on changes that have been introduced to certain publicity requirements in response to the Coronavirus pandemic; please see paragraphs 035 to 052 of Consultation and Pre-decision Matters - Planning Practice Guidance (PPG) which has been updated on 13 May 2020.

<https://www.gov.uk/guidance/consultation-and-pre-decision-matters>

Paragraph	Existing Commitment	Current Service
3.7 (Development Plan Documents), 4.9 (Neighbourhood Plans), 8.3 (Committee Reports) 7.17 (Access to Customer Service Centre and its terminals)	Availability of hard copies of adopted documents and planning applications	<p>Hard copies of Planning Policy documents will be available whenever possible and in the most accessible location.</p> <p>As of 6 July 2020, hard copies of the Local Plan and other Planning Documents will be available in the main Colchester library, further to our commitment on this point in the Council's Statement of Community Involvement.</p> <p>As more libraries across the Borough are expected to reopen from 14 July 2020, it may be appropriate for these and other publicly accessible buildings to hold hard copies of documents, particularly for Neighbourhood Plans.</p> <p>It may be the case that public buildings are closed again in future and if that situation arises, Officers will seek to provide hard copies on request. This maybe on a loan basis to avoid unnecessary printing.</p> <p>In any event, documents will continue to be available on the Council's website.</p> <p>Council planning documents are available online at <a href="https://www.colchester.gov.uk/planning/">https://www.colchester.gov.uk/planning/</a>.</p> <p>Information on planning applications can be viewed at: <a href="https://www.colchester.gov.uk/planning-search/">https://www.colchester.gov.uk/planning-search/</a></p>

Paragraph	Existing Commitment	Current Service
		Specific enquiries can be made to the planning services e-mail address <a href="mailto:Planning.Services@colchester.gov.uk">Planning.Services@colchester.gov.uk</a> .
4.12	Neighbourhood Plans	<p>We are continuing to provide support for Neighbourhood Plan groups. Consultation methods for Neighbourhood Plans are currently being revisited to develop alternatives to providing hard copies of documents and ensuring all those without internet access are informed of the consultation. Consultation methods are likely to require a blend of online and more traditional methods such as writing to the community.</p> <p>More information on Neighbourhood Plans in the Borough is available on the Council's website:  <a href="https://www.colchester.gov.uk/info/cbc-article/?catid=neighbourhood-planning&amp;id=KA-01416">https://www.colchester.gov.uk/info/cbc-article/?catid=neighbourhood-planning&amp;id=KA-01416</a></p> <p>The Government has also updated its guidance regarding Neighbourhood Plans, at Paragraph 107 on this page:  <a href="https://www.gov.uk/guidance/neighbourhood-planning-2?utm_source=59bd2d28-4ebd-4761-af20-742d84865702&amp;utm_medium=email&amp;utm_campaign=g">https://www.gov.uk/guidance/neighbourhood-planning-2?utm_source=59bd2d28-4ebd-4761-af20-742d84865702&amp;utm_medium=email&amp;utm_campaign=g</a></p>
7.14 and 7.19	Site Notices and Site Visits	<p>Officers are now undertaking site visits providing safe social distancing can be ensured. This may include low-risk outdoor areas accessed from open areas. This will continue to be monitored and updated in response to any change in risk level (either increased or decreased).</p> <p>It has been particularly helpful when applicants and agents have been able to submit photographic surveys of application sites and buildings to support planning and listed building applications. We will continue to request this sort of information about sites to enable us to process applications as efficiently as possible.</p> <p>There are certain categories of applications where a site notice is obligatory to avoid invalidating any decision.</p> <p>We may need the help of applicants/agents to print a site notice which will be sent via email and to post the notice(s) prominently in a publicly accessible location. We will ask for a photograph of the site notice in situ to be sent via email for our records.</p> <p>Our validation team will contact you with any such requests and the response should be provided via email.</p>
7.23 and 7.24	Public meetings, Parish and Town Councils	We are not currently holding or attending any face-to-face meetings. Where meetings are being held virtually using web-based technology, the Council will endeavour to participate in such meetings where invited subject to other commitments.

Paragraph	Existing Commitment	Current Service
		<p>All documents can be viewed online at: <a href="https://www.colchester.gov.uk/info/category/?id=planning-policy">https://www.colchester.gov.uk/info/category/?id=planning-policy</a></p> <p>Information on planning applications can be viewed at: <a href="https://www.colchester.gov.uk/planning-search/">https://www.colchester.gov.uk/planning-search/</a></p>
8.3 and 8.4	Council Committees and public speaking	<p>The Council is now conducting virtual meetings using web-based technology. These are likely to operate until May 2021 unless the regulations are extended.</p> <p>The detailed arrangements listed in the 'Public Participation at all Public Meetings' section of the 'Remote Meetings Procedure Rules' will be followed to allow public participation to occur.</p> <p>These measures continue to be monitored and reviewed; these will be updated accordingly. Measures for Local Plan Committee and Planning Committee may vary to other Council meetings.</p> <p>The Have Your Say! Process for Planning Committee is as follows:</p> <ul style="list-style-type: none"> <li>• Members of the public may submit written questions/statements by 12 noon the working day before the meeting date. In addition to the questions/statement the following information is required: name, email address, application number and site location.</li> <li>• Questions/statements should be confined to material planning issues which may be taken into consideration in reaching a decision.</li> <li>• One objector and one supporter will be able to make representations on each application. In circumstances when more than one person wishes to make representation either in opposition or support; the Chairman will decide which one representation will be permitted in accordance with the following criteria: <ul style="list-style-type: none"> <li>○ Is the representation made on behalf of a wider group (i.e. Parish Council or Residents Group);</li> <li>○ Proximity of the person making the representation to the application site;</li> <li>○ The timing of the submission.</li> </ul> </li> <li>• If you are appointed to speak you will receive an email confirmation including instructions on how to join the meeting.</li> <li>• The chairman will announce the names of those wishing to make representations to the Committee members.</li> <li>• A three minute period (equates to 500 words) is allowed for members of the public to ask a question or make a statement by audio or video link. Once the time has</li> </ul>

Paragraph	Existing Commitment	Current Service
		<p>elapsed, the person will be required to leave the meeting. The remainder of the meeting can be observed online.</p> <ul style="list-style-type: none"> <li>• Visiting Councillors will be allowed a five minute period to speak.</li> <li>• The Chairman has discretion to disallow or terminate any public participation which is scurrilous, vexatious, improper, irrelevant or otherwise objectionable.</li> </ul> <p>The Have Your Say! Process for Local Plan Committee is as follows:</p> <ul style="list-style-type: none"> <li>• Members of the public wishing to make representations will need to register by 12 noon the working day before the meeting date with their name, email address, and whether the representation is a general matter or related to an item of business.</li> <li>• People indicating that they want to speak will receive an email to confirm whether they will be able to and instructions of how to join the meeting.</li> <li>• All speakers will have their say at the start of the meeting; <ul style="list-style-type: none"> <li>• Each speaker is limited to 3 minutes (500 words maximum) with one submission per meeting.</li> <li>• The Have Your Say! Portion of the meeting will be limited to 30 minutes (10 speakers) per meeting;</li> <li>• Visiting Councillors can speak in addition to this allocation, limited to 5 minutes each per meeting.</li> </ul> </li> </ul> <p>More information is available on the Councils website - <a href="#">Have Your Say!</a></p>
9.1	Planning Appeals	<p>The Planning Inspectorate is developing alternative digital and written means for carrying out hearings and inquiries to allow appeal casework to progress.</p> <p>The Council will work with the Inspectorate to keep as much appeal casework going as is possible with the current restrictions.</p> <p>Details from the Planning Inspectorate of how specific planning appeals are to be carried out will be available on the Council's website under the specific planning application.  <a href="https://www.colchester.gov.uk/planning-search/">https://www.colchester.gov.uk/planning-search/</a></p> <p>The Planning Inspectorate are continuing to update their guidance. For more information visit:  <a href="https://www.gov.uk/guidance/coronavirus-covid-19-planning-inspectorate-guidance">https://www.gov.uk/guidance/coronavirus-covid-19-planning-inspectorate-guidance</a></p>

