

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 8th 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 27th June 2018 set out the Inspector's findings in respect of the need for new homes. The third letter dated 2nd 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 22nd 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 30th 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 affects 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.