

21 September 2021

Report of	Assistant Director of Place and Client Services	Author	Karen Syrett
Title	Colchester Local Plan Section 2 Examination		☎ 506477
Wards affected	All		

1. Executive Summary

- 1.1 Following virtual examination hearings in April 2021, the Planning Inspector has confirmed his recommended 'main modifications' for the Section 2 Local Plan.
- 1.2 A number of these modifications reflect those already put forward by the Council in the run up to the examination hearings to add clarity or provide factual updates and those discussed during the hearing sessions themselves. The main modifications are considered necessary by the Inspector for the Plan to be considered sound, in accordance with the four tests of soundness in the National Planning Policy Framework (NPPF).
- 1.3 The 'main modifications' recommended by the Planning Inspector must be published for a six week public consultation, before the Inspector can write his final report and the Plan can be adopted.
- 1.4 Officers have also prepared 'additional modifications' and modifications to the Policies Maps as consequential changes from the main modifications, to provide factual updates or to correct spelling/grammar errors.

2. Recommended Decision

- 2.1 It is recommended that the Local Plan Committee:
- 2.2 Note the Planning Inspector's recommended main modifications for the purposes of soundness (attached as Appendix A).
- 2.3 Note that public consultation will be undertaken on all the main modifications recommended by the Planning Inspector to make the Local Plan sound.
- 2.4 Note that an update to the Sustainability Appraisal (SA) incorporating an Strategic Environmental Assessment (SEA) and the Habitats Regulations Assessment (HRA) for the Modified Section 2 Local Plan are required 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, the Council would need to consider an alternative approach to challenge the findings or withdraw the Section 2 Plan. It should be noted that the main modifications schedule 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 be:
- Withdraw the plan and start again.
 - 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 and may leave the Council open to speculative development here is no guarantee the second option would be successful.
- 4.4 Having considered the costs and benefits of these options, officers recommend that the Council continue with the Plan process and consult on proposed main modifications.

5. Background Information

- 5.1 The Colchester Local Plan comprising Section 1 and Section 2 were submitted to the Secretary of State in October 2017. In February 2021, the Council adopted the Section 1 Local Plan which sets out the overarching strategy for North Essex including policies setting the overall housing and employment requirements and policies relating to the Tendring Colchester Borders Garden Community.
- 5.2 The Section 2 Local Plan contains specific local policies and proposals relevant to the borough of Colchester only. Like Section 1, before the Section 2 Local Plan can be formally adopted by the 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). As the Plan was submitted in October 2017 the 2012 NPPF is relevant for Examination purposes.
- 5.3 The 'tests of soundness' 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.
- 5.4 Preparation for the Section 2 examination began in Autumn 2020 when the Planning Inspectorate (PINs) notified the Council, alongside Braintree and Tendring District Councils that two Inspectors had been adopted to lead the individual examinations for each authorities Section 2 Local Plan. The Inspectors are Anne Jordan BA (Hons) MRTPI and Jameson Bridgwater PGDip TP MRTPI.
- 5.5 In March 2021, the Inspector provided a draft timetable for the Section 2 hearing sessions and a series 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. These were published on the [Council's Examination Website](#).
- 5.6 The Council and other participants in the examination (i.e., those who made representations during the publication consultation in Summer 2017) were invited to prepare and submit hearing statements that responded in writing, to the Inspector's Questions. Officers produced hearing statements which responded to all the Inspector's questions, with input from expert consultants who prepared technical studies which form the Local Plan evidence base and legal advice where necessary.
- 5.7 Examination hearings for the Section 2 Local Plan took place over a two week period in April 2021, virtually using Zoom. Each hearing session was live streamed on the Council's YouTube channel, in a similar manner to the Council's virtual committee meetings. The following matters were covered:

Day 1 – 20 April 2021

- Main Matter 1 – Legal Requirements and Overarching Issues
- Main Matter 2 – Sustainable Growth Policies (SG1-SG8)
- Main Matter 3 – Environmental Assets Policies (ENV1-ENV5 and CC1)

Day 2 – 21 April 2021

- Main Matter 4a – Generic Infrastructure and Mitigation Requirements (Policy PP1)
- Main Matter 4b – Colchester Town Centre (Policies TC1-TC4)
- Main Matter 5 – North Colchester (Policies NC1-NC4)
- Main Matter 6 – South Colchester (Policies SC1-SC3)

Day 3 – 22 April 2021

- Main Matter 7 – East Colchester (Policies EC1-EC4)
- Main Matter 8 – West Colchester (Policies WC1-WC5)
- Main Matter 9 – Sustainable Settlements (Policies SS1-SS16)
- Main Matter 10 – Other Village and Countryside (Policies OV1-OV2)

Day 4 – 23 April 2021

Reserve Day (this was not required)

Day 5 – 27 April 2021

- Main Matter 11 – Policies DM1 to DM4 – Health and Wellbeing, Community Facilities, Education Provision and Sports Provision
- Main Matter 12 – Policies DM5 – Tourism, Leisure, Culture and Heritage
- Main Matter 13 – Policies DM6, DM7 and SM14 – Economic Development in Rural Areas and the Countryside, Agricultural Development and Diversification and Rural Workers' Housing

Day 6 – 28 April 2021

- Main Matter 14 – Policies DM8 to DM11 - Affordable Housing, Development Density, Housing Diversity and Gypsies, Travellers and Travelling Showpeople
- Main Matter 15 – Policies DM12, DM13 and DM15 - Housing Standards, Domestic Development and Design and Amenity
- Main Matter 16 – Policy DM16 – Historic Environment

Day 7 – 29 April 2021

- Main Matter 17 – Policies DM17 to DM19 – Retention of Open Space and Recreation Facilities, Provision of Public Open Space and Private Amenity Space
- Main Matter 18 - Policies DM20 to DM22 - Promoting Sustainable Transport and Changing Travel Behaviour, Sustainable Access to Development and Parking
- Main Matter 19 - Policies DM23 to DM25 – Flood Risk and Water Management, Sustainable Urban Drainage Systems and Renewable Energy, Water, Waste and Recycling
- Main Matter 20 – Monitoring

Day 8 – 30 April 2021

Reserve Day (this was not required)

- 5.8 At each session, the Council were represented by Officers and where necessary consultant experts who prepared technical studies which form part of the Local Plan evidence base. Third parties such as landowners, developers and members of the public were also given the opportunity to speak during the hearing sessions, if they had made a representation during the publication draft consultation and they requested to do so, in accordance with Section 20 (6) of the Planning and Compulsory Purchase Act 2004 (as amended).
- 5.9 The Inspector leading the Colchester examination has now confirmed to the Council his series of 'main modifications' that are considered necessary for the plan to be made 'sound' and legally compliant, before the plan can proceed to adoption.
- 5.10 A large number of the modifications reflect broadly those put forward by Officers as suggestions as a result of representations to the Publication Draft Consultation in Summer 2017, through updated evidence and/or to reflect the passage of time since submission of the plan. None of the modifications are considered by Officers to be radical or unexpected.
- 5.11 Critically, the Inspector is not asking for any additional sites to be included in the Local Plan or for any sites to be removed.
- 5.12 The full schedule of recommended main modifications by the Inspector is attached as Appendix A. These include:
- Correct all references to reflect the adoption of Section 1 Local Plan which contains the singular Garden Community at Tendring Colchester Borders.
 - Include requirement for wintering bird surveys for several residential allocations as recommended in the HRA.
 - Update to *Table SG2: Colchester's Housing Provision* to remove Colchester Braintree Borders Garden Community, to reflect Statements of Common Ground (SoCG) made with developers in relation to Lakelands and Layer De La Haye; and provide factual updates to include the most up to date housing figures upon adoption.
 - Remove criteria from *policy SG6 Town Centre Uses* which provided a distinctive treatment of Tollgate Centre which is not in accordance with national policy.
 - Provide clarity to *policy SG8 Neighbourhood Plans* that once made, a neighbourhood plan becomes a part of the Development Plan.
 - Policy *ENV1 Environment* now provides reference to biodiversity net gain, the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMs), irreplaceable habitats and countryside.
 - A new requirement in Policy *CC1 Climate Change* for a tree canopy cover assessment to be provided for all major applications.
 - Policy *TC1 Town Centre Policy and Hierarchy* clarifies the mix of uses that would be supported in Colchester Town Centre, in accordance with the greater flexibility provided by national policy.

- Policy *TC3 Town Centre Allocations* provides greater criteria for the redevelopment of Vineyard Gate to reflect the Council's updated proposals.
- Policy *SC1 South Colchester* includes additional text for the Abro Site which has been carried forward from the Adopted Local Plan and previously omitted from the Section 2 Local Plan.
- Supporting text and policy *SC2 South Colchester Middlewick Ranges* has been modified in a number of ways which includes clarification of transport assessment and mitigation measures, biodiversity net gain requirements, to ensure the evidence base and Masterplanning work adequately reflects full range of environmental considerations, heritage assets, landscape considerations, contamination, developer contributions and timing/phasing in relation to biodiversity net gain, as well as the opportunity for effective engagement with the community through masterplanning for the site.
- Policy *EC3 East Colchester Allocations* includes text for the Place Farm employment and residential allocation included elsewhere within the plan but omitted from this policy.
- Policies *WC1/WC2 Stanway* to reflect the current planning position including the grant on appeal for town centres uses and no longer includes the former Sainsburys Site for residential development.
- Updates to policies *SS5 Eight Ash Green*, *SS15 West Bergholt* and *SS16 Wivenhoe* to reflect that neighbourhood plans have been made.
- Policy *SS14 Tiptree* and supporting text reflects the granting of permission for 200 dwellings at Barbrook Lane and clarifies that the Neighbourhood Plan will deliver a minimum of 400 dwellings (as opposed to 600).
- Policy *DM11 Gypsies, Travellers and Travelling Showpeople* – this policy now clearly retains allocations from the Adopted Local Plan to ensure this specific need is continually met across the Borough.
- Policy *DM12 Housing Standards* includes an additional criterion noting the Building Control requirement for sprinkler systems to be provided in new applications for accommodation with a top storey above 11m (4 storeys).

5.13 As part of the statutory process, the main modifications which the Inspectors consider necessary to make the Local Plan sound, have to be published for six weeks consultation alongside an updated Sustainability Appraisal (SA) and Habitats Regulations Assessment (HRA) for the Section 2 Local Plan. The SA and HRA are currently being prepared by consultants LUC.

5.14 Officers have also prepared a schedule of additional modifications which are minor and either factual in nature, required as a result of a main modification or to correct spelling/grammar, see Appendix B. Similarly, a schedule of consequential modifications to the policies maps (see Appendix C) have also been prepared. In the interest of transparency and completeness, these are to be published alongside the main modifications for consultation.

Next Steps

- 5.15 The next stage is for the Council to publish the main modifications for a six week 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 2 Local Plan with the Inspector's recommended modifications and these documents will be published for consultation alongside the modifications.
- 5.16 Any comments received will be submitted to the Inspector for his consideration before he comes to a final decision on whether the Section 2 Local Plan with those modifications, is sound and can be formally adopted. It is proposed that the six week consultation will take place between October and November 2021.
- 5.17 The consultation will be only on the proposed modifications set out in Appendices A to C to this report and the supporting SA/SEA and HRA. For completeness and transparency, alongside the Inspector's Main Modifications, the Council will also publish the 'additional modifications' and modifications to the policies maps which are required as consequential changes from the main modifications, for factual updates or to correct spelling/grammar errors. An introduction will be added to each of the modification schedules, before publishing for consultation to make clear to the public the difference between main and additional modifications.
- 5.18 Given the nature of this consultation being limited to the modifications, it is considered appropriate for majority of the consultation to 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 Council's Consultation Portal. Whilst in person events are not planned, officers 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. All steps for the consultation will follow the legislative requirements of the Planning and Compulsory Purchase Act 2004 and the Town and Country Planning (Local Planning) (England) Regulations 2012 and will also comply with the Council's Statement of Community Involvement (SCI) for this stage in the process.
- 5.19 As with Section 1, the decision to formally adopt the Section 2 Plan at the end of the process will be made by a meeting of the Full Council. This will result in the Colchester Local Plan as a whole being adopted.

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 2021 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 the area, addressing the needs and opportunities in relation to housing, the economy, community facilities and infrastructure – as well as a basis for safeguarding the environment.
- 6.2 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 Section 2 Local Plan through the remaining stages of the plan making process and ensure it meets the requirements of national

planning policy so that, together with Section 1, it can become the new statutory development plan and be relied upon by the Council acting as the Local Planning Authority. It will replace the current Local Plan (comprising The Core Strategy, Site Allocations DPD and Development Management Policies and various site specific DPDs which will become increasingly out of date (these documents are available on the [CBC website](#)).

- 6.3 The Planning and Compulsory Purchase Act 2004 and the Town and Country Planning (Local Planning) (England) Regulations 2012 place certain provisions on the Local Planning Authority in complying with the plan making process, also tested at Examination. These include;
- 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;
 - provision for regulations relating to the preparation, publication and representations relating to a local plan and the independent examination;
 - requirement for 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;
 - requirement for 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.
 - provides that the Inspectors 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
- 6.4 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 already confirmed that legal and procedural requirements have been met but that the Section 2 Local Plan will require modifications to ensure that it is sound. These modifications need be published for consultation in their own right before the Council can proceed to the adoption of Section 2. An updated Sustainability Appraisal will be published for consultation alongside the modifications. Consultants LUC will carry out this update and will also produce an update to the Habitat Regulations Assessment (HRA) which will consider the impact of the modifications on international wildlife sites.
- 6.5 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 2.
- 6.6 The Portfolio Holder has confirmed, in line with Borough Constitutional requirements, that he agrees with proceeding with the proposals set out for the purposes of soundness.

7 Equality, Diversity and Human Rights implications

- 7.4 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/Equality%20Impact%20Assessment%20June%202017.pdf>

8 Strategic Plan References

- 8.4 All themes in the Strategic Plan are relevant, in particular: Delivering homes for people who need them. 'Create new communities and adopt a new Local Plan that delivers jobs, homes and the infrastructure to meet the borough's future needs' is a priority under this theme.

9 Consultation

- 9.4 If the Council proceed with modifications to the Section 2 Local Plan, along the lines indicated by the Planning Inspector, those main modifications would need to be the subject of a six week public consultation to invite any final comments for the Inspector to consider before he can come to a decision on the soundness of the plan.
- 9.5 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). An introduction will be added to each of the modification schedules, before publishing for consultation to make clear to the public the difference between main and additional modifications. The updated Sustainability Appraisal (SA) and Habitats Regulations Assessment (HRA) will however be published alongside the modifications and comments on those documents will be invited. Following completion of the SA and HRA work, the consultation exercise will run for 6 weeks between October and November 2021 with the relevant documents being published on the Council's website and hard copies made available to view at the Colchester main library subject to their opening hours and arrangements in light of the coronavirus pandemic. Consultees and those on the Council's 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.
- 9.6 Following the consultation, officers will process all representations received and submit them (alongside the documents subject to the consultation) to the Inspector's Programme Officer.

10 Publicity Considerations

- 10.4 All documents are available on the examination website hosted by the Council.
- 10.5 The Local Plan is likely to generate significant publicity for the Council as it has done previously.

11 Financial implications

- 11.4 The production and examination of the Local Plan has been undertaken within an allocated budget, including evidence base preparation, consultation and examination.

12 Health, Wellbeing and Community Safety Implications

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

13 Health and Safety implications

- 13.4 No direct implications.

14 Risk Management Implications

- 14.4 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.
- 14.5 There is also a risk of legal challenge following adoption of the Local Plan if any party believes that the Inspector or the Councils have made any legal or procedural errors. There are no obvious grounds that would justify such a challenge. There was no legal challenge to the adoption of the Section 1 Local Plan earlier this year.
- 14.6 The Inspector has given clear advice on how the Section 2 Local Plan ought to be modified in order to meet the government's tests of soundness and for the Council to proceed to the next stage of the plan making process.

15 Environmental and Sustainability Implications

- 15.4 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 2 of the Local Plan has taken these objectives as its starting point.
- 15.5 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 2 of the Local Plan can contribute to achieving sustainable development.

Appendices

Appendix A – Schedule of Proposed Main Modifications

Appendix B – Schedule of Proposed Additional Modifications

Appendix C – Schedule of Proposed Modifications to Policies Maps