

14th July 2020

Report of	Assistant Director: Place and Client Services	Author	Laura Chase
Title	Local Plan: Inspector's Conclusions and Implications		
Wards affected	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of consultation on the main modifications must be undertaken, otherwise the alternative position is that the Plan is withdrawn from examination and the Council will be required to start again.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 22nd 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 Section1 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).