

Local Plan Committee Meeting

**Grand Jury Room, Town Hall, High Street,
Colchester, CO1 1PJ
Monday, 03 October 2022 at 18:00**

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

Information for Members of the Public

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www.colchester.gov.uk

COLCHESTER BOROUGH COUNCIL
Local Plan Committee
Monday, 03 October 2022 at 18:00

The Local Plan Committee Members are:

Councillor Martin Goss	Chairman
Councillor Kayleigh Rippingale	Deputy Chairman
Councillor Tracy Arnold	
Councillor Lewis Barber	
Councillor Richard Kirkby-Taylor	
Councillor Jocelyn Law	
Councillor Sam McLean	
Councillor Patricia Moore	
Councillor Gerard Oxford	
Councillor Paul Smith	
Councillor William Sunnucks	

The Local Plan Committee Substitute Members are:

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

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

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

1 Welcome and Announcements

The Chairman will welcome members of the public and Councillors and remind everyone to use microphones at all times when they are speaking. The Chairman will also explain action in the event of an emergency, mobile phones switched to silent, audio-recording of the meeting. Councillors who are members of the committee will introduce themselves.

2 Substitutions

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

3 Urgent Items

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

4 Declarations of Interest

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

5 Minutes of Previous Meeting

The Councillors will be invited to confirm that the minutes of the meeting held on 15 August 2022 are a correct record.

Local Plan Committee minutes 150822

7 - 14

6 Have Your Say!

Members of the public may make representations to the meeting. . Each representation may be no longer than three minutes. It is helpful if members of the public wishing to address the Council register their wish to address the meeting by e-mailing democratic.services@colchester.gov.uk by 12.00 noon on the working day before the meeting date. However, there is no absolute requirement to pre register and members of the public may register in person immediately before the meeting.

7 Canopy Cover Assessment Guidance

15 - 22

The Committee will consider a report inviting it to approve canopy cover assessment guidance. A canopy cover assessment is an assessment of the area of ground directly covered by the leaves and branches of vegetation and is expressed as a percentage. The Local Plan requires all major applications to prepare a canopy cover assessment and then increase the level of canopy cover onsite by a minimum of 10%.

8 Affordable Housing Supplementary Planning Document

23 - 56

The Committee will consider a report inviting it to approve publication of the Affordable Housing SPD for a six-week consultation period from 20 October to 2 December 2022.

9 Planning Enforcement Policy

57 - 76

The Committee will consider a report requesting that the Committee adopt a new Planning Enforcement Policy for Colchester. The Policy sets out what constitutes a breach of planning, when enforcement action should be taken, the types of action available and the limitations.

10 **Exclusion of the Public (not Scrutiny or Executive)**

In accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public, including the press, from the meeting so that any items containing exempt information (for example confidential personal, financial or legal advice), in Part B of this agenda (printed on yellow paper) can be decided. (Exempt information is defined in Section 100I and Schedule 12A of the Local Government Act 1972).

Local Plan Committee Background Information Version 2 July 2022 77 - 82

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

LOCAL PLAN COMMITTEE

15 August 2022

<i>Present: -</i>	Councillors Goss (Chair), Arnold, Kirkby-Taylor, Laws, McLean, Moore, Ripplingale, Sunnucks, J. Young
<i>Substitute Member: -</i>	Cllr J. Young substituted for Cllr Law.
<i>Also in Attendance: -</i>	

243. Minutes

The Minutes of the meeting held on the 25 May 2022 and 13 June 2022 were confirmed as a correct record.

244. Have Your Say!

Sir Bob Russell addressed the Committee pursuant to provisions of Meetings General Procedure Rule 5 (1). The Committee heard from the speaker about the recent meeting of the Tendring Colchester Borders Garden Community Joint Committee (TCBGCJC) and queried how this related to Colchester and the Governance arrangements surrounding the meeting including Colchester Borough Councils Membership. The Committee heard about the impact that any development would have on Salary Brook nature reserve and how there must be a 1.5-kilometre gap between development and reserve. Further to this the speaker outlined that any planting on the site would need to be started immediately so any development would not be seen in Greenstead as the proposed allocations would be harmful to the landscape and asked that any reference to a Country Park was highlighted early on. The speaker elaborated that a report from Councillor Sunnucks had been given to the TCBGCJC but had been disregarded and raised concern over how much money could be spend on consultants. The speaker concluded that the TCBGCJC should walk the proposed site before any decisions and listen to what has been said by the Community and interested parties.

The Chair responded that the that the TCBGCJC had a separate mandate from the Council agreed with Tendring and that the Local Plan Committee had separate governance arrangements.

Councillor Young responded to the Have Your Say speaker and outlined that they were present as a representative of Colchester Borough Council at the previous meeting of the TCBGCJC on the 18 July 2022 and elaborated that Councillor Sunnucks' report was made available to Officers prior to the meeting and confirmed that it would not be dismissed. Councillor Young commented that Salary Brook was discussed and there was a uniformity of opinion at the meeting that the development would come halfway down the slope on the proposed site and that the Committee would revisit the representations once they had been received by Officers.

Councillor Sunnucks responded to the Have Your say speaker and outlined that Salary Brook

was a wonderful area and commented that the TCBGCJC had not grasped the themes that he had addressed and that the proposals were lagging behind on the planning side and had suggested some contacts who would provide professional advice. Councillor Sunnucks concluded by raising concern regarding the minutes of the previous meeting of the TCBGCJC and their accuracy.

The Lead Officer for Housing Planning and Economic Growth addressed the Committee and confirmed that Officers would be taking onboard the report and advice that was being provided by Councillor Sunnucks and confirmed that the TCBGCJC only had decision making power for the designated area and commented that the style of Minutes was not the same as Colchester Borough Council's.

245. Infrastructure Audit

Nick Chilvers addressed the Committee pursuant to provisions of Meetings General Procedure Rule 5 (1). The Committee heard how the timeline for the completion of the audit was optimistic and questioned some of the data referenced within the report as it was dated as 2015. The speaker asked the Committee to consider consulting with Councillors and Parish Councils who would be able to provide information for the audit as they knew their areas well and would be able to provide an insight into the infrastructure in the area.

Councillor Sunnucks commented that it was vital to get the Council and Parish Councillors engaged in the information gathering and would be a sound basis for securing funds at the planning stage through Section 106 Agreements and CIL contributions as well as inform any revision of the Garden Community and future investments in all infrastructure.

The Democratic Services Officer read out a statement from Councillor Lee Scordis as follows:

I wanted to raise the issue tonight on infrastructure in the South of Colchester and asking for us to not be forgotten. For residents in the South, the main direction of travel, especially in the South-East, is to head north. It's where the jobs, the city centre and the train stations are. As it stands the current road infrastructure is struggling to cope, while the bus network is inadequate.

The South has changed dramatically, as there are fewer jobs available than there have been in past decades. We constantly talk of a future tram system linking East to West Colchester, but South to North is rarely hinted at. Instead the majority of traffic is forced up a very narrow bottleneck on Mersea Road or onto the flooded Haven Road.

Moving forward it is vital that the Local Plan committee do look at future potential bus routes for the new communities being proposed in the recently approved Local Plan.

However infrastructure is not just roads. It is also schools, GP surgeries, community centres and playparks. The Hythe is a perfect example of where we have failed on infrastructure. Apart from a community centre, there is little else here. It's almost a stop-gap between New Town and Greenstead and has become nothing more than a dumping ground for houses, with no infrastructure considered. Most of the Section 106 monies from the developments appear to have gone elsewhere, while the flooding of Haven Road remains unaddressed. Developments with playparks have at most a swing, a slide and possibly a small roundabout - they are frankly laughable, and we can and must do better

moving forward. On mass developments like we have seen in the Hythe it is vital that Section 106 monies stay in the immediate area to help create a future community.

I do hope you can take my points into consideration during your debate.

The Lead Officer for Housing Planning and Economic Growth presented the report to the Committee outlining that the Committee were being asked to inform the methodology for the Audit. The Committee heard that the methodology was not restricted by legislation with the Council free to choose its approach to provide the baseline data of where infrastructure was and where investment was needed. It was noted that the comments from the Have Your Say speaker would be taken onboard and advised that Parish Councils had been contacted in December 2021 but could be contacted again. The Lead Officer for Housing Planning and Economic Growth outlined that the process would create an evidence base and confirmed that some work would be undertaken by officers but it would also involve professional consultants to understand what information would be needed. The Lead Officer For Housing Planning and Economic Growth gave the example that they had a draft report regarding sports halls and the standard approach to demand from Sport England which had identified deficiencies in the sports provision in the East of the borough.

The Committee discussed the possible inclusions of headings including youth provision and whether this needed its own provision in the infrastructure audit, whether issues relating to Mersea Island and coastlines should have a special status especially with regard to expected development, road network issues including traffic issues and access to the Island due to tidal forces. Members continued to discuss the topic and asked that utilities were included in the audit such as adopted drains and roads as this would be important information to understand the required need. Furthermore, the Committee asked that the audit include details on the pinch points in GP services as well as the playground and open space provision in the borough.

The Committee continued to discuss and debate the information that should be included in the audit which included the blue green infrastructure, surface water, drainage, and sewage capacity as there was not a clear strategy in place and that enforcement on the issue was required. The Committee agreed that there was an increasing issue with surface water drainage especially with road drainage and ongoing maintenance of infrastructure which was causing major refits as some infrastructure was not properly maintained.

Members discussed the size of the topic and how there were many areas that could be detailed and discussed how to focus the scope of the work to ensure that the task set was manageable and what the outcomes would be. It was discussed that the audit at this point should be top down akin to one conducted by Essex County Council which had identified an £11 Billion shortfall in infrastructure. Some Members of the Committee were concerned about the use of consultants but agreed that their expertise would be required in some areas and that there would be a significant challenge in data gathering as some authorities and agencies could say that they have enough provision already. It was noted that a benefit of this undertaking would allow the Council to have an evidence base to inform Section 106 Agreements and lobbying of local MPs.

Committee Members discussed the topic of youth provision and how this should be singled out as its own category as this was a priority and how this should be looked at on a localised basis rather than city-centric and using data from existing sources such as the YMCA and how the process would need to involve young people, Councillors and Officers working collaboratively. Members continued to discuss the topic and noted that it was woven in with many other factors of infrastructure such as safe spaces, sports provision, as well as mental

health needs and the issues surrounding County Lines. It was further noted that many of the designated youth services were run through volunteer roles and not paid positions.

The discussion from the Committee continued and considered that the scope of the review should be moderate and based upon capital investment, the reach of Essex County Council and how the needs of the Colchester should be based upon the Councils aims and shape the report to reflect those needs. The Lead Officer for Housing Planning and Economic Growth responded that youth zones would be classified under community and noted that there was a distinction regarding youth facilities and that consultants would be required to kick off this area of research to benchmark data and provide some key performance indicators.

The Chair allowed the speaker (Nick Chilvers) to address the Committee. The speaker outlined how they were heartened to hear that there would be engagement with the parishes and that their ideas could be used to inform the process.

The Committee continued to discuss the themes to be included in the methodology which included the needs of elderly people based on the Country's aging population and that research should be undertaken to compare what other infrastructure studies had been undertaken by other authorities.

RESOLVED (UNANIMOUSLY)

That the Methodology for the infrastructure Audit include:

- A top-down approach looking at the baseline data of what information was required before an in-depth analysis was undertaken.
- That consultation would be carried out with the Parish Councils and elected Members.
- That Youth provision would be included as a separate area in the report
- That Officers research similar audits that had been conducted
- That Professional advice would be sought on areas of the audit where the Council did not have expertise.
- That health provision is included which (including impacts from an aging population)
- That Blue Green infrastructure was included as well as provisions for drainage and foul water systems.
- That open space and children's playgrounds be included.

246. Supplementary Planning Guidance Update

The Place Strategy Manager presented the report to the Committee and explained that Supplementary Planning Guidance would add to the statutory development plan. The Place Strategy Manager added that these would be used to identify topic areas that needed further information, evidence and guidance to inform the planning process. The Committee heard that these included an Affordable Housing Supplementary Planning Documents (SPD) and Climate Change and Sustainability SPD. It was noted that there was likely to be a crossover with other authorities reviews in areas such as car parking from the County Council. The Place Strategy Manager concluded that there may need to be further SPDs in the future.

The Committee discussed the update from the Place Strategy Manager on whether there was a need for more SPDs in the planning process and whether these were urgently required

by the Council and whether the Council needed to lead the process with regards to Biodiversity Net Gain where it could be copied from other work that was being undertaken.

The Place Strategy Manager responded that the some of SPD's including Affordable Housing needed to be updated and that once completed would correspond to provisions in the Local Plan. The Committee heard that there was a priority for some work and that other plans would need to be looked at in conjunction with the Councils partners which included Climate Change and Sustainability.

Members debated whether the rules associated with S106 agreements and planning obligations could be enforced in a more rigorous manner which could create a stiffer policy in the Infrastructure Audit. Members of the Committee queried whether the Government's Levelling Up agenda would affect the planning system and the Councils approach in the next five years. It was subsequently confirmed that there was not enough detail to conclude whether there would be substantive changes.

The Committee continued to debate the SPDs on the issues including archaeology and the preservation of the Towns Heritage, and whether a shopfront design guide was something that the Council wanted to consider. It was noted that the survival of the high street was of key importance to the Town and considered whether the appearance of the shops could be improved to increase the appeal of the high street especially with city status conferred on Colchester. Members discussed this comparing what was currently in place regarding metal shutters as well as what possible colour palettes could be implemented.

The Development Manager advised the Committee that a unified management approach to the Town Centre would provide a holistic approach and drew Members attention to the work of the Public Realm team and commented on how there had been mixed success in the past with regards to shopfronts but concluded that there were options available to the Council. Members discussed some of the options which included lighting and signage and how there needed to be a balance as more regulation could cause damage to the high street. It was noted that Councillor Young provided photos to the Clerk of various examples of shops around the town which were subsequently emailed to the Committee after the conclusion of the meeting.

The report was noted by the Committee

247. Guidance Note on Permitted Development

The Development Manager presented the report to the Committee outlining that the purpose of the guidance note was to inform Councillors, interested parties and the general public of extended Permitted Development Rights and Permitted Changes of Use. The Committee heard that the note set out what considerations could be taken into account by the Council when making a decision and how representations could be made and on what issues. The Development Manager concluded by advising the committee that Permitted Development rights were very complex and now included major changes to development and demolition but hoped that the guidance note would provide some clarity on the area.

Members debated the content of the guidance note including homes of multiple occupation as well as the relationship this would have on fire safety. Some Councillors felt that the note could be interpreted as advertising the permitted development rights and could lead to an uptake in their use. The Committee debated how PD rights could be taken away from developments by Officers and the Planning Committee and whether these rights would help promote development but would take away the chance for full consultation from the local

community. The Committee continued to discuss the guidance note including Homes in Multiple Occupation (HMO) as well as the conversion of office blocks and how this would affect the town but also the future occupants.

The Lead Officer for Housing, Planning and Economic Growth and the Development Manager responded to the points that had been raised by the Committee which included: that the purpose of the document before Members was as an aide to help them when contacted by residents, that it was not an exhaustive list of all General Permitted Development Orders.

RESOLVED (UNANIMOUSLY) that the guidance note be published on the Council's website and that a copy of the guidance note is circulated to all Councillors.

248. Neighbourhood Planning Update

The Democratic Services Officer read out a statement from Tassanum Sayed as follows:

1/The Neighbourhood Plan Process

Architects and Developers need to be included from the outset. Neighbourhood Plans were introduced by the Localism Act 2011 and have remained a Political Priority locally and nationally. The Neighbourhood Planning Act 2017 ensured further progress in preparing NPs. NPs are led by qualifying bodies which are made up of 1/Parish Council 2/Town Council 3/21 Local Residents or 4/Civic Leaders Local Organisation. They start by designating a NPA (Neighbourhood Planning Area) by applying to the Local Planning Area (LPA). Once the area has been defined and designated, the team will start drafting a plan, which involves considerable "Community Consultation". The plans are submitted to an Examiner, to ensure it meets basic requirements. After the exam, the NP goes to Referendum. If successful it is formally made by the LPA and will become part of the Local Development Framework, LPP, and NPPF.

2/The Importance of Neighbourhood Plans in less affluent areas, with diverse communities, lower incomes, and varied programmatic landscape.

Architects and Developers can help improve the area. Planning appeals can be recovered by the Secretary-of-State where there is an application for 10 or more houses in an area with a Neighbourhood Plan, demonstrating the importance of Neighbourhood Plans, politically. There is additional protection from insensitive developments where the local community are unable to engage with the Planning Process. In Colchester, which has 17 electoral Wards, 7 of the Neighbourhood Plans that have been brought forward are in affluent areas 1/Boxted, 2016 2/ Myland and Braiswick, 2016 3/Wivenhoe, 2019 4/West Bergholt, 2019 5/Eight Ash Green, 2019. More recently 6/Marks Tey, 2022 and 7/West Mersea, 2022. Areas with an Neighbourhood Plan, led by a Steering Committee have better Urban Regeneration results, opening the Conversation between Community and Developer, empowering and supporting the local communities needs. EMERGING NEIGHBOURHOOD Plan Steering Group, (all in affluent, rural areas) include 1/Tiptree, 2022 2/ Copford, 2022 3/Great Tey, 2022 4/Great Horkesley, 2022. Stanway and Messing have a designated area but no NP.

3/Community benefits of Neighbourhood Plans working with Architects and Developers

Architects and Developers need to be involved from the outset, when an area of a distinguished Neighbourhood is earmarked for new Development. In areas where there is a Neighbourhood Plan and a Parish Council. The Parish can receive 25% of the Community Infrastructure Levy, to spend on Community Priorities in the Neighbourhood Planned area, providing a CLEAR INCENTIVE for Neighbourhoods to get a plan together. The Neighbourhood Planning Act introducing extra powers to strengthen the position of Neighbourhood Plans, making it clear that NP should be a material consideration on a Planning Application. Government encourages NP as all communities can have a greater say on the new developments that are planned. A healthy exchange of ideas and information between resident community and incoming developers is encouraged by the NP.

4/Challenges for Locals, with preparing Neighbourhood Plans in less affluent areas.

Architects and Developers need to be "called in" from the outset. Neighbourhood Planning can be very difficult for local people to prepare, as most may not have Professional experience of the UK Planning Process. Local people, new residents who do not know much about their environs. They may not have come into contact with various NP requirements nor have an understanding of the area. NPs are COMPLEX, MULTIFACATED DOCUMENTS and have robust and detailed technical requirements.

Evidence suggests Neighbourhood Plans (2012-2022) are concentrated in rural and wealthy areas with professionally-educated landowners and long-term homeowners protecting their property and neighbourhoods from large Developments. NPs need to become accessible to all, and tackle those Neighbourhoods that are vulnerable would benefit the most. NPs must include various groups of society in the Neighbourhood PLANNING CONVERSATION. The Local Plan needs to be up-to-date (it may cover items from a set period-in-time). An Emerging Neighbourhood Plan can come forward in advance of a Local Plan (which was prepared in a different period). An Emerging Neighbourhood Plan needs to look forward, identifying Key Drivers, working with Architects, Developers, the Community and the Neighbourhood to produce the most successful results for all.

Following the statement the Committee and Officers commented that they would like to see examples of where Neighbourhood Plans had been created in non-Parished areas and that there was support from the Council for Parish Councils and for formulated residential groups to undertake plans, however, it was noted that a vast amount of work, time, and money was required to create a plan even within the structured governance of a Parish Council.

The Place Strategy Manager presented the report to the Committee, which was for Members information, and confirmed that the Neighbourhood Planning Process remained active in the borough with previously adopted plans remaining part of the Development Plan. The Place Strategy Manager informed the Committee that work was continuing on plans including Tiptree who were working tirelessly and would be submitting a revised draft imminently. The Place Strategy Manager confirmed that plans were emerging in Copford, Great Tey and Great Horkesley and that support was being provided by the Council.

The report was noted by the Committee.

3 October 2022

Report of	Assistant Director of Place and Client Services	Author	Shelley Blackaby
Title	Canopy Cover Assessment Guidance		☎ 07977 184926
Wards affected	All wards affected		

1. Executive Summary

- 1.1 Policy CC1 (Climate Change) of the [adopted Local Plan](#) (2022) includes criteria for how a low carbon future for Colchester will be achieved. In relation to canopy cover, the policy says:

“(iv) A Canopy Cover Assessment will be required for all major applications. Development proposals should seek, where appropriate, to increase the level of canopy cover on site by a minimum of 10%. In circumstances where this is not possible or desirable, compensatory provision should be identified and secured through a legal obligation.”

- 1.2 A canopy cover assessment is an assessment of the area of ground directly covered by the leaves and branches of vegetation and is expressed as a percentage. The principal objective of a tree canopy cover assessment is to help understand the urban forest resource, specifically the amount of tree canopy that exists on an individual site at present. Canopy cover assessments provide a more accurate representation than simply counting the number of trees.
- 1.3 The Local Plan requires all major applications to prepare a canopy cover assessment and then increase the level of canopy cover onsite by a minimum of 10%. To help applicants understand how the canopy cover assessment should be carried out, a guidance note has been prepared.

2. Recommended Decision

- 2.1 It is recommended that the Committee approve the canopy cover assessment guidance.

3. Reason for Recommended Decision

- 3.1 The adopted Local Plan requires major applications to carry out a canopy cover assessment and increase canopy cover by a minimum of 10%. This guidance provides advice on how the canopy cover assessment should be carried out, which will assist applicants, Development Management Officers, and Members.

4. Alternative Options

- 4.1 The alternative option is to not approve the guidance or to amend it prior to publication. The requirement for a canopy cover assessment and increase in canopy cover by a minimum of 10% would still apply.

5. Background Information

- 5.1 Policy CC1 (Climate Change) of the [adopted Local Plan](#) (2022) includes criteria for how a low carbon future for Colchester will be achieved. In relation to canopy cover, the policy says:
- “(iv) A Canopy Cover Assessment will be required for all major applications. Development proposals should seek where appropriate to increase the level of canopy cover on site by a minimum of 10%. In circumstances, where this is not possible or desirable, compensatory provision should be identified and secured through a legal obligation.”
- 5.2 A canopy cover assessment is an assessment of the area of ground directly covered by the leaves and branches of vegetation and is expressed as a percentage. The principal objective of a tree canopy cover assessment is to help understand the urban forest resource, specifically the amount of tree canopy that exists on an individual site at present. Canopy cover assessments provide a more accurate representation than simply counting the number of trees.
- 5.3 The importance of vegetation in towns and urban areas is long recognised; it provides shade, evaporative cooling, rainwater interception. It has an influence on other items such as air quality, energy use, biodiversity, and the reduction of the urban heat island effect. It also has positive impacts on human health and mental wellbeing.
- 5.4 There is an ongoing and increasing level of evidence that has made it clear that trees are a cost effective way of providing a wide range of benefits to the environment, individuals and society and as part of the wider green infrastructure are an important component of climate change adaption strategies.
- 5.5 The tree canopy coverage for Colchester Borough is currently 18% varying between wards / locations. There are some areas with larger and better canopy cover and others with significantly less. The long-term aim should be to increase the canopy cover of the borough to 20% and then 25%. It is recognised that this is an aspirational target, but that new development should seek to contribute to increase tree canopy cover where appropriate. It is considered that 10% as a target on development sites where appropriate would help to mitigate the likely losses of trees over the plan period whilst steadily increasing the overall canopy cover of the borough.
- 5.6 The Local Plan requires all major applications to prepare a canopy cover assessment and then increase the level of canopy cover onsite by a minimum of 10%. To help applicants understand how the canopy cover assessment should be carried out, a guidance note has been prepared.
- 5.7 This guidance is aimed at applicants, Development Management Officers, and Members. The purpose of this guidance is to set out the Council’s expectations in relation to the policy requirement for canopy cover assessments. It is intended to be a concise guide.
- 5.8 The guidance sets out some background and explains how to measure existing canopy cover onsite and that once the current level of canopy cover on the site has been measured, it is necessary for applicants to work out how new tree planting can achieve a minimum of 10% increase in canopy cover. A Tree Planting Plan should be prepared to show the location, species, and radius of the canopy of new trees. This can be used to

calculate canopy cover, in m², post development, and calculate the percentage increase in canopy cover.

6. Equality, Diversity and Human Rights implications

- 6.1 An Equality Impact Assessment has been prepared for the Local Plan, and is available to view by clicking on this link:

<https://cbccrmdata.blob.core.windows.net/noteattachment/Equality%20Impact%20Assessment%20June%202017.pdf>

7. Strategic Plan References

- 7.1 The requirement for a canopy cover assessment and increase in canopy cover by a minimum of 10% is included in Policy CC1: Climate Change as one of the measures to achieve a low carbon future for Colchester. It thus relates to the Strategic Plan theme 'Tackling the climate challenge and leading sustainability' and specifically the priority 'conserve and enhance biodiversity'.

8. Consultation

- 8.1 The policy requirement for canopy cover assessments was consulted upon as part of the Local Plan main modifications consultation.

9. Publicity Considerations

- 9.1 The guidance, if approved, will be added to the Council's website and shared with applicants.

10. Financial implications

- 10.1 There are no financial implications.

11. Health, Wellbeing and Community Safety Implications

- 11.1 An increase in tree canopy cover is expected to support the health and wellbeing of Borough residents.

12. Health and Safety Implications

- 12.1 No direct implications.

13. Risk Management Implications

- 13.1 No direct implications.

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, which are interdependent and need to be pursued in mutually supportive ways. These are economic, social and environmental objectives.

14.2 Increasing canopy cover will contribute towards the theme of 'enhance biodiversity and protect our environment' in the Council's Climate Emergency Action Plan.

Appendices

Canopy cover assessment guidance

Canopy Cover Assessment Guidance

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Introduction

Policy CC1 (Climate Change) of the [adopted Local Plan](#) (2022) includes criteria for how a low carbon future for Colchester will be achieved. In relation to canopy cover, the policy says:

(iv) A Canopy Cover Assessment will be required for all major applications. Development proposals should seek where appropriate to increase the level of canopy cover on site by a minimum of 10%. In circumstances, where this is not possible or desirable, compensatory provision should be identified and secured through a legal obligation.

The support text to policy CC1 adds the following about canopy cover assessments:

The benefits for the natural and local environment and climate change of tree canopy cover are widely recognised. A study (The Canopy Cover of England's Towns and Cities: baselining and setting targets to improve human health and well-being) carried out in 2017, concluded the following:

- An average TCC of 20% should be set as the minimum standard for most UK towns and cities, with a lower target of 15% for coastal towns;
- Towns and cities with at least 20% cover should set targets to increase cover by at least 5% (i.e. above the $\pm 2\%$ tolerance of i-Tree Canopy) within ten to 20 years (depending on what is achievable against their baseline); and
- Targets and strategies for increasing tree cover should be set according to the species, size and age composition of the existing urban forest, based upon a ward/district level and land-use assessment.

The tree canopy coverage for Colchester Borough is currently 18% varying between wards / locations there are some areas with larger and better canopy cover and others with significantly less. As per the recommendation above, the long-term aim should be to increase the canopy cover of the borough to 20% and then 25%. It is recognised that this is an aspirational target, but that new development should seek to contribute to increase tree canopy cover where appropriate. It is considered that 10% as a target on development sites where

appropriate would help to mitigate the likely losses of trees over the plan period whilst steadily increasing the overall canopy cover of the borough.

A Canopy Cover Assessment will be required for all major applications. Development proposals should seek where appropriate to increase the level of canopy cover on site by a minimum of 10%. In circumstances, where this is not possible or desirable, compensatory provision should be identified and secured through a legal obligation. This will increase the overall canopy cover of the borough, enable sites to mitigate and adapt to climate change and deliver biodiversity net gain.

(paragraphs 5.5-5.7)

Major applications are defined as per Article 2 of the Town and Country Planning (Development Management) Procedure (England) Order 2015 as: Development involving any one or more of the following—

- a) the winning and working of minerals or the use of land for mineral-working deposits;
- b) waste development;
- c) the provision of dwellinghouses where -
 - (i) the number of dwellinghouses to be provided is 10 or more; or
 - (ii) the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph;
- d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or (e) development carried out on a site having an area of 1 hectare or more.

Whilst the requirement for increasing tree canopy cover relates to major applications, all minor applications are also encouraged to increase tree coverage onsite.

The importance of trees is recognised in the [NPPE](#), which says:

Trees make an important contribution to the character and quality of urban environments, and can also help mitigate and adapt to climate change. Planning policies and decisions should ensure that new streets are tree-lined, that opportunities are taken to incorporate trees elsewhere in developments (such as parks and community orchards), that appropriate measures are in place to secure the long-term maintenance of newly-planted trees, and that existing trees are retained wherever possible. Applicants and local planning authorities should work with highways officers and tree officers to ensure that the right trees are planted in the right places, and solutions are found that are compatible with highways standards and the needs of different users. (paragraph 131)

Purpose of guidance

This guidance is aimed at Development Management Officers and applicants. The purpose of this guidance is to set out the Council's expectations in relation to canopy cover assessments.

Background – What is a canopy cover assessment?

A canopy cover assessment is an assessment of the area of ground directly covered by the leaves and branches of vegetation and is expressed as a percentage.

The term hedgerow can be applied to a wide range of planting features, many of which will not provide meaningful canopy cover value. Therefore, hedgerows will not be included in the canopy cover calculations. However, if the applicant feels there is justification for including them, this should be discussed with the Council.

The principal objective of the tree canopy cover assessment is to help understand the urban forest resource, specifically the amount of tree canopy that exists on an individual site at present. Canopy cover assessments provide a more accurate representation than simply counting the number of trees. Represented as a percentage of the area in total it is then much more accurate to show changes in the cover (increase or decrease).

The importance of vegetation in towns and urban areas is long recognised; it provides shade, evaporative cooling, rainwater interception. It has an influence on other items such as air quality, energy use, biodiversity, and the reduction of the urban heat island effect. It also has positive impacts on human health and mental wellbeing.

There is an ongoing and increasing level of evidence that has made it clear that trees are a cost-effective way of providing a wide range of benefits to the environment, individuals and society and as part of the wider green infrastructure are an important component of climate change adaption strategies.

How will it work?

Measure existing canopy

The applicant will need to assess existing canopy cover area on site, in m², using a tree and/or a topographical survey. The British Standard (BS5837) is the standard which developers and local authorities work to when considering how trees are treated on a development site. The canopy spread of trees is measured at the four cardinal points and once they have been plotted on a plan it will be straightforward to measure the canopy area. The total area of existing canopy should then be expressed as a percentage of the total size of the red line boundary of the development site.

The initial canopy cover measurement can be derived from the tree survey. However, as the crowns of trees often grow across boundaries it is important to make it clear that for the purposes of measurement, only canopy which is within the red line boundary of the development site can be counted.

New tree planting

Once the current level of canopy cover on the site has been measured, it is necessary to work out how new tree planting can achieve a minimum of 10% increase in canopy cover. A Tree Planting Plan should be prepared to show the location, species, and radius of the canopy of new trees. This can be used to calculate canopy cover, in m², post development, and calculate the percentage increase in canopy cover.

It will be challenging to achieve 10% increase in canopy cover at the time of planting. It takes many years for trees to grow to their potential and so the canopy cover target is aimed at a future time.

The assessment must take into account the shape and size of trees to give a more accurate representation of the canopy cover value and the soil volume requirements for each tree to be planted.

There is a direct relationship between how well a tree can grow above ground and the health and resources of the root system below. Trees need soil in which to grow and that soil needs to provide for the tree for many years if it is to reach its full potential. The volume and quality of soil, and the way it is provided will dictate the size to which a tree can grow. It is often considered that a tree needs approximately 0.6m³ of soil for each 1m² of canopy projection.

What information is required in support of an application?

To support the application, applicants should submit a report which clearly details the percentage of existing canopy cover within the red line boundary of the development site, a Tree Planting Plan, and the percentage increase in canopy cover.


All tree surveys must be carried out by a suitably qualified arboricultural consultant.

What if minimum of 10% increase cannot be achieved on site?

Policy CC1 says that in circumstances, where it is not possible or desirable to achieve a minimum of 10% increase in canopy cover, compensatory provision should be identified and secured through a legal obligation. This will only be permitted in exceptional circumstances. The Council's expectation is that major development sites will increase the level of canopy cover within the site by a minimum of 10%.

Compensatory provision will need to be discussed with the case officer on a case-by-case basis. Compensatory provision could include provision of alternative green infrastructure on or adjacent to the site; tree planting adjacent to the site; or a financial contribution, secured through s106, to fund tree planting elsewhere in the borough.

3rd October 2022

Report of	Assistant Director of Policy and Cooperate	Author	Bethany Jones  282541
Title	Affordable Housing Supplementary Planning Document		
Wards affected	All wards affected		

1. Executive Summary

- 1.1 Local Planning Authorities are able to request affordable housing from planning applicants to meet the needs of different groups within the community in line with paragraph 62 of the National Planning Policy Framework (NPPF).
- 1.2 There are many factors which need to be considered during the planning application process as there are many scales and locations of development where different provisions are required. To ensure consistent and effective guidance, the Council prepares Supplementary Planning Documents (SPDs). An Affordable Housing SPD has been prepared due to its national and local level of importance. It is intended to consult on the SPD for a six week period. Comments received will then be considered and the SPD will be returned to the Local Plan Committee for adoption.
- 1.3 This SPD was originally produced in 2020 with a consultation that commenced in January 2020. Based on the feedback from the consultation, it was decided that the SPD should not be further advanced prior to examination and adoption of the Local Plan (Sections 1 and 2).
- 1.4 Following adoption of the Colchester Local Plan Section 2 in July 2022, the Affordable Housing SPD has been updated, with consideration given to previous consultation responses as well as updating the policy context. The updated Affordable Housing SPD is now being presented to the Local Plan Committee for approve public consultation.

2. Recommended Decision

- 2.1 To approve publication of the Affordable Housing SPD for a six-week consultation period from 20 October to 2 December 2022.
- 2.2 For the Committee to delegate authority to the Lead Officer for Planning and Place Strategy to make minor revisions to the document prior to publication.

3. Reason for Recommended Decision

- 3.1 The adoption of this guidance will help to guide the delivery of affordable housing across the Borough. The SPD will be used as a material consideration in the determination of planning applications within the Borough.

4. Alternative Options

- 4.1 The alternative would be to not progress the more detailed guidance; however, this would limit the Council's ability to secure diversity of housing within new development.

5. Background Information

- 5.1 Supplementary Planning Documents (SPDs) cannot set out new policy, but instead expand upon how Local Plan policies should be applied. In this case, the Affordable Housing SPD provides detail on Local Plan policies concerning requirements for this specific type of housing.
- 5.2 The National Planning Policy Framework (NPPF) outlines that the housing needs of different community groups should be addressed and reflected in planning policies including but not limited to those who require affordable housing, families with children, older people, students, people with disabilities, service families, travellers and people who rent their homes (paragraph 62).
- 5.3 The Council's Development Management team encourages all applicants to contact the team in the early stages of development proposals for preliminary (pre application) advice. Through this, the Council are able to outline what the likely contribution from the proposed development may be, in terms of affordable housing, and where relevant other specific types of housing. The Council's previously adopted SPD for Affordable Housing (2011), is outdated due to more recent evidence being produced. As a result, it is considered necessary for the Council to outline their updated approach to such housing provisions, and this is presented in the SPD.
- 5.4 The SPD sets out the policy background, evidence base, delivery and example Section 106 agreements. A glossary and relevant local policy extracts are included as appendices.
- 5.5 The Affordable Housing SPD provides the context of when and how these specific housing types can be delivered across the Borough. This is intended to ensure that, in line with national and local policy, these specific types of housing are secured through the planning application process in order to meet the needs of the local community.
- 5.6 The Affordable Housing SPD outlines the affordable housing requirements for above policy threshold sites, detail about rural exception sites, vacant building credit and alternatives to only be considered in exceptional circumstances including off site provision and commuted sums.
- 5.7 A Sustainability Appraisal (SA) Report was prepared for the Local Plan which appraises the policies this supplementary guidance relates to. This can be viewed [online](#).
- 5.8 An SEA Screening Opinion and Habitats Regulations Screening will be undertaken for the SPD and made available as part of the consultation. This will be published on the CBC website.
- 5.9 During the previous six week consultation in 2020 on the first draft of the revised Affordable Housing SPD, a total of 12 responses were received (see appendix 1 below). Reflection was given to the feedback and amendments have been made withing the SPD now being presented to the Local Plan Committee. Most notably the production of the SPD was postponed until the Colchester Local Plan was adopted because there was some concern about using two sets of policies. The delay has also allowed the new First Homes scheme to be addressed within the SPD.

- 5.10 There were various comments requesting that keyworker homes and Almshouses should be specifically referred to within the SPD, however these already fall within the definition of Affordable Housing so are supported and taken into account on a case by case basis, therefore it was felt no further amendment was required. Evidence of this can be seen at the site allocation in Stanway (Permission No 202829) which includes new Almshouses. Other representations questioned the percentage of affordable housing being required. The 30% requirement for affordable housing has been tested through the Local Plan Examination and is not subject to challenge through this SPD. The requirement is now within Policy DM8 of the Section 2 Local Plan.

6. Equality, Diversity and Human Rights implications

- 6.1 An Equality Impact Assessment has been prepared for the Local Plan, and is available to view by clicking [here](#).
- 6.2 The adoption of guidance on affordable housing will not have an adverse impact on equality, diversity and human rights.

7. Strategic Plan References

- 7.1 The provision of affordable housing encompasses the Council's priority of ensuring all residents benefit from the growth of the Borough.

8. Consultation

- 8.1 Draft SPDs must be consulted upon as set out in the Council's [Statement of Community Involvement](#) (SCI). This outlines that SPDs will be consulted on for a 6-week period, with consultees to include statutory consultees, general consultees on our database, and other relevant stakeholders. It is intended to consult on the SPD, for a 6-week period starting in October 2022.
- 8.2 Notifications will be sent to all relevant consultees in accordance with the SCI. The CBC website will be updated to host the consultation documents, including the SEA Screening Report. Officers will also explore an alternative method of consultation electronically, such as using the Council's Planning Consultation Portal (JDi) or the use of Microsoft Forms or other online questionnaires providers.
- 8.3 Responses will inform the final version of the SPD which will be submitted to the Local Plan Committee for approval.

9. Publicity Considerations

- 9.1 The Council and its Communication team will proactively manage the SPD and consultation on it to ensure developers and the general public are aware of the benefits of developing a clear and consistent approach to securing affordable housing.

10. Financial implications

- 10.1 Adoption of clear and consistent guidance to secure specific housing contributions will help the Council to fund its delivery.

11. Health, Wellbeing and Community Safety Implications

- 11.1 Adoption of clear and consistent guidance to secure the provision of housing to meet the varied needs of residents across the Borough, will help to promote positive health and community safety benefits to our residents.

12. Health and Safety Implications

- 12.1 None.

13. Risk Management Implications

- 13.1 The Affordable Housing SPD will reduce the risk of the Council being challenged for not providing housing to meet the needs of different groups in the community as outlined in National Policy.
- 13.2 The Affordable Housing SPD will provide consistent advice to landowners, developers, officers, Councillors and members of the public.

14. Environmental and Carbon 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, which are interdependent and need to be pursued in mutually supportive ways. These are economic, social and environmental objectives.

Appendices

- 1 – Summary of Representations Received 2020 and Officer Comments
2 - Affordable Housing SPD Consultation Draft

Background Papers

None.

Appendix 1 – Summary of Representations Received 2020 and Officer Comments

Respondent	Paragraph No. (from 2020 draft SPD)	Officer Summary	Officer Response
Mersea Homes		Premature to produce SPD prior to adoption	Comments noted. Production of the SPD was postponed and is being updated following adoption of the Local Plan. The updated SPD expands upon how the adopted Local Plan (2017-2033) policies should be applied and provides detail on Local Plan policies concerning Affordable Housing. NPPF references have been updated in line with revised NPPF 2021. Postponing the production of this SPD has allowed the new First Homes initiative to be addressed in the SPD. Section 4 of the SPD outlines the evidence base used to inform the Local Plan and the SPD.
	3.7	Reference should be made to paragraph 77 of the NPPF that discusses the development of entry-level exception sites, suitable for first time buyers.	
	3.16	Note that the AH requirement is based on the Strategic Housing Market Assessment, which is also important when considering the mix of dwellings required.	
	4.2	Strategic Housing Market Assessments Practice Guidance explains that SHMA documents should be updated more frequently than every five years. The latest SHMA document requires updating.	
	4.6	It is highly likely that the First Home consultation will end up dictating the tenure mix by making it a legal requirement to have a far great percentage of home ownership tenure. As stated before, we believe this SPD is premature due to the known policy changes that will soon be enforced.	
	4.9	If this is the expectation for large sites (greater than 10 dwellings) why has it not been suggested for all major sites? Where is the consistency?	
	4.11	However, it is very clear that market need and affordable need require a very different supply. For example, 1 & 2 bed market housing is said to need 21% of the delivery whereas affordable 1 & 2 bedroom units is said to be 64% of delivery. It is therefore clear that affordable housing mix should not be proportionate to market mix.	

Respondent	Paragraph No. (from 2020 draft SPD)	Officer Summary	Officer Response
	4.11	This is too vague and does not help developers understand what is required of them and would lead to arguments. Surely the starting point should be a pro rata proportion of the SHMA need unless both parties agree that other evidence means an alternative mix can be agreed.	
	5.3	There should be no need to negotiate, as stated above, the SHMA mix should be the starting point.	
	5.3	No point, nor is always practical for the mix to be pepper potted.	
	5.3	Paragraph 5.3 repeats elements of Emerging Policy DM8. As this text is not set out in adopted policy, it should not form part of the SPD.	
	5.4	Paragraph 5.4 is seeking a mix that differs to that indicated in the Strategic Housing Market Assessment and therefore, Emerging Policy DM10.	
	5.9	As above the SPD cannot make policy requirements so should not make this a requirement. Secondly the Government First Home policy currently being consulted on will significantly change the situation and make the SPD out of date before it is even adopted.	
	5.9	We see no clear justification as to why the Council believes that major Garden Community schemes are any different from other major schemes. There is no justification for inconsistency.	
	5.13	This list of criteria amounts to a development management policy. It is not repeated in adopted planning policy and it is not referred to in the emerging planning policy. It should not be presented in this SPD.	
	5.14	Change so that it is consistent with the Glossary definition	

Respondent	Paragraph No. (from 2020 draft SPD)	Officer Summary	Officer Response
	5.15	This way of calculating the financial contribution is not commercial. It is an accepted fact that affordable housing delivery is far less risky than market housing and therefore commercial profit margins of affordable housing are much lower. The way this is being calculated the developer is being asked to accept all the additional risk with no financial gain. Therefore it cannot be a straight deduction as indicated here.	
	5.17	It is not necessary to refer to further viability assessments in the SPD. Paragraph 5.17 should be deleted. Paragraph 5.18 provides sufficient text to cover this point.	
	7.2	This is likely to change with the First Home proposals. The Council hold back from progressing this SPD until the outcome of the Government's consultation document is clear.	
Resident		I am pleased to read your revised proposal to raise the threshold to 30% in policy DM8 from 20% in policy H4. I trust this will be rigorously enforced. Regarding the rural exceptions policy it would be helpful to define the threshold for 'rural'.	Noted
Wivenhoe Town Council		It is not acceptable to add to this Supplementary Planning Document the condition that 'Where it is demonstrated that the scale of affordable housing provision and other policy burdens would result in the proposed development not being financially viable, the Council may consider a lower contribution....' Colchester Borough Council policy should set the bar at high and ubiquitous standard for all development. We also acknowledge that acceptable exemptions are – care homes, hostels, residential schools and colleges (where the accommodation is directly linked to	Comments noted. Production of the SPD was postponed and is being updated following adoption of the Colchester Local Plan. This includes Section 1 related to the Garden Community and further detail will be added through a DPD. Student housing is meeting a different identified housing need as set out in NPPF paragraph 65.

Respondent	Paragraph No. (from 2020 draft SPD)	Officer Summary	Officer Response
		<p>educational facilities on site) and military housing. However, we do question the current exemption for student housing (and all studio-flats or bed-sits) and ask that this is reviewed. It should be making a contribution to affordable homes too. If not on site, then elsewhere. If not a possibility then given student accommodation counts towards the total housing targets, if these sites make no contribution towards affordable housing then to achieve the overall target, the percentage would need to be marginally raised about 30% on other developments. We do strongly object to the inconsistency with regard to meeting needs only when it suits developer's viability. This policy's deviation from the 80/20 splits for the new towns (to 60/40) is clearly unacceptable and is without justification. This SPD as it stands would give a financial advantage to the new town developers as opposed to other developers as the profit margin on shared ownership is higher than for affordable housing to rent. There is no justification at this stage of the policy, or indeed any stage of a development project, to justify reducing social rented home allocations because of viability. Writing exceptions into policy opens the door to any developer taking the upper hand in future negotiations. If CBC wants to deliver against the local housing need then a change in attitude and a robust policy is essential.</p>	
		<p>Believe future policy should give specific attention to affordable housing for rent, recognising that rent should be linked to what is reasonable; shared ownership; gifted properties/Council having invested in new build properties.</p>	Noted

Respondent	Paragraph No. (from 2020 draft SPD)	Officer Summary	Officer Response
CPRE	Rural Exception Sites p15-16	Neighbourhood planning is key and must assist in delivering AH to rural areas. It is particularly important that the local planning policies relating to rural exception sites should restrict these sites to locations that are contiguous with or adjacent to the existing settlement boundary and not located in open countryside. Also supported, is the requirement for the provision of affordable housing on such sites to relate to a current Local Housing Needs Survey in which the beneficiaries must have a real and genuine affinity with the parish.	Comments noted
ESNEF		Request that Key Worker affordable housing is specified and request that the SPD is amended to make reference to a requirement to provide a proportion of key worker housing for healthcare workers as part of affordable housing contributions within general housing developments. Taking the Council's adopted and emerging affordable housing policies into account, it is considered that an expansion to the local definitions is required to include appropriate reference to key worker accommodation. The NPPF 2019 differentiates between the varying types of affordable housing provision that can be provided to meet the needs of different groups, with particular reference given to 'essential local workers'. With the above in mind, it is requested that the draft Affordable Housing SPD is revised to include reference to the provision of key worker accommodation including for those employed in the healthcare sector in line with the national affordable housing definitions set out on page 5 of the draft document. This is considered to be necessary to enable the application of local plan	Comments noted. The definition of affordable housing is taken from the 2021 NPPF and set out in the SPD. It is a national definition and not one that can be changed locally. Postponing the production of this SPD has also allowed the new First Homes initiative to be addressed in the SPD.

Respondent	Paragraph No. (from 2020 draft SPD)	Officer Summary	Officer Response
		<p>policies to be fully applied regarding affordable housing requirements and delivery. As currently worded, it is considered that the adopted and draft affordable housing policies and supporting draft SPD document do not cover and fully embrace the full affordable housing definitions set out in Annex 2 of the NPPF.</p>	
ECC		<p>ECC notes that the SPD may need to be reviewed to reflect any changes to national policy that may arise following the Government's current consultation on 'First Homes'. We therefore recommend that this evolving area of policy is kept under review and if necessary, changes are made to the SPD to reflect national policy requirements. In relation to the use of planning obligations, ECC encourages CBC to make use of overage clauses as part of s.106 Agreements to ensure any uplift in development viability over time is reflected in increased developer contributions. ECC therefore recommend that the SPD includes a requirement for viability monitoring on developments of strategic scale to ensure improved values resulting from residential developments are captured in the form of additional affordable housing. ECC would welcome the opportunity to work with CBC in further developing this requirement</p>	<p>Comments noted. Production of the SPD was postponed and is being updated following adoption of the Local Plan. Postponing the production of this SPD has allowed the new First Homes initiative to be addressed in the SPD. We will continue to engage with ECC during the consultation.</p>

Respondent	Paragraph No. (from 2020 draft SPD)	Officer Summary	Officer Response
Legacy East Almshouse Partnership		<p>Almshouses should be added to affordable housing mix. I therefore believe the SPD should include something to the effect:</p> <ul style="list-style-type: none"> - Developers should be strongly encouraged to gift land suitable for the building of properties to be managed as almshouses for use by local people or people having a strong connection - The developer should build these properties suitable for the needs of the people for which they are intended at their cost - The LPA and local parish council should encourage the creation of a charitable almshouse scheme and work in partnership with an organisation which can implement and manage such a scheme on with the area where the development is taking place. - The LPA and local parish council should determine the categories of people for whom these properties are intended. 	<p>Comments noted. CBC support Almshouses on a case by case basis. Currently a site is allocated in Stanway which includes Almshouses (Land North of London Road)</p>
Resident		<p>30% affordable should not include any variations of low cost homes to buy; low cost rent; self build starter homes. These should all come under the percentage of homes to be marketed. Clauses diluting percentage of affordable housing should be completely removed.</p>	<p>Comment noted</p>
		<p>Consultation is premature - should be after adoption and first homes outcome. Concerns that the policy set out will not deliver the affordable rent and social rent, one-to-two bedroom properties the borough is short of. Endorse comments around the need for policy to support almshouses in the borough.</p>	<p>Production of the SPD was postponed and is being updated following adoption of the Local Plan. Postponing the production of this SPD has allowed the new First Homes initiative to be addressed in the SPD.</p>
Sigma Planning on behalf of Rydon Homes		<p>Mix needs to be flexible to address current conditions but guidance needs to be clear on how this will happen. Suggests the required Mix to be published annually in the AMR. Not feasible for developers to do it for each application</p>	<p>Comments noted</p>

Respondent	Paragraph No. (from 2020 draft SPD)	Officer Summary	Officer Response
Wivenhoe Society		<p>Paragraph 4.2 states that the SHMA is the main evidence base. The chart is reproduced from table 7.3 in the SHMA report. However the SHMA report does not appear to be internally consistent. Paragraph 5.7 sets out the emerging policy requirement for 30% affordable housing provision for developments of more than 10 dwellings. Paragraph 5.9 states "Other than the circumstances set out at 4.9 above, the affordable housing mix should be no less than 80% affordable rent or social rent and no more than 20% as other affordable tenures including shared ownership and other routes to home ownership. Regard will also be had to the requirements of paragraph 64 of the NPPF and the Colchester affordable housing need." In the paragraph 4.9 referred to in this quote, for the garden communities it appears that 60:40 split is proposed rather than an 80:20. This policy would give a financial advantage to the Garden Community developers as opposed to other developers as the profit margin on shared ownership and on discounted housing for sale is higher than for affordable housing to rent. The playing field should be level for all developers. It should be pointed out that, with 30% affordable housing, the 80:20 split would result in 6% of new housing being for discounted sales of one sort or another and the 60:40 would give 12% of new housing for discounted sales, one figure being below the 10% suggested in the NPPF and one figure being above.</p>	<p>Comments noted. The SPD outlines the latest evidence base used to inform the Local Plan and the SPD. Production of the SPD was postponed and will be updated following adoption of the Colchester Local Plan. This includes Section 1 related to the Garden Community and further detail will be added through a DPD.</p>

Affordable Housing Supplementary Planning Document (SPD)

Consultation Draft
September 2022

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1. Introduction

What is a Supplementary Planning Document?

- 1.1 Supplementary Planning Documents (SPDs) are intended to explain or provide further detail to policies or site allocations in a Local Plan document. They can take the form of design guides, area development briefs, master plans or issue-based documents. They will be used in deciding planning applications and will help the Council defend its decisions at appeals.
- 1.2 The planning policies adopted by Colchester Borough Council enable the Council to ask developers to provide affordable housing on site or make a financial contribution towards it. The purpose of this SPD is to give clear guidance on the Council's expectations for the provision of affordable housing and the process for delivering this.
- 1.3 This SPD will have the status of a material consideration in the determination of planning applications, once adopted by the Council following public consultation.
- 1.4 The SPD does not contain any new policies but provides detailed guidance to supplement policies in the Local Plan and the revised National Planning Policy Framework (NPPF) published in July 2021.
- 1.5 The aim of this document is to help guide the delivery of affordable housing in Colchester which will help to meet the strategic vision and objectives of the Colchester Local Plan by supporting the creation of a sustainable long-term future for communities.
- 1.6 This SPD will replace the Colchester Borough Council Affordable Housing SPD, August 2011.

Public Consultation

- 1.7 In accordance with the Government guidance in the Town and Country Planning (Local Development) (England) Regulations 2004, Regulation 18, and the Council's Statement of Community Involvement; the SPD will be the subject of public consultation for a period of six weeks. The consultation for this will run from: Thursday 20 October to Friday 2 December 2022.
- 1.8 Responses can be sent to the Council via:
 - email to: planning.policy@colchester.gov.uk
 - post to: Planning Policy, Colchester Borough Council, Colchester Town Hall, High Street, CO1 1PJ

All consultation responses must be received no later than 5pm on 2 December 2022. If you have any questions about the consultation, please contact the Planning Policy Team via planning.policy@colchester.gov.uk

If you would like this document in an alternative format such as large print, braille or another language please contact the Planning Policy Team.

- 1.9 Following this consultation, the final version of the document will be amended and presented for consideration of the Local Plan Committee before adoption.

Sustainability Appraisal

- 1.10 A Sustainability Appraisal (SA) Report has been prepared for the Local Plan which appraises the policies this supplementary guidance relates to. This can be viewed [online](#).
- 1.11 An SEA Screening Opinion and Habitats Regulations Screening has been undertaken for this SPD. These opinions can also be viewed online.

2. Affordable Housing Definition

2.1 Affordable Housing is defined in the NPPF 2021 as the following:

“Housing for sale or rent, for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers); and which complies with one or more of the following definitions:

a) Affordable housing for rent: meets all of the following conditions: (a) the rent is set in accordance with the Government’s rent policy for Social Rent or Affordable Rent, or is at least 20% below local market rents (including service charges where applicable); (b) the landlord is a registered provider, except where it is included as part of a Build to Rent scheme (in which case the landlord need not be a registered provider); and (c) it includes provisions to remain at an affordable price for future eligible households, or for the subsidy to be recycled for alternative affordable housing provision. For Build to Rent schemes affordable housing for rent is expected to be the normal form of affordable housing provision (and, in this context, is known as Affordable Private Rent).

b) Starter homes: is as specified in Sections 2 and 3 of the Housing and Planning Act 2016 and any secondary legislation made under these sections. The definition of a starter home should reflect the meaning set out in statute and any such secondary legislation at the time of plan-preparation or decision-making. Where secondary legislation has the effect of limiting a household’s eligibility to purchase a starter home to those with a particular maximum level of household income, those restrictions should be used.

c) Discounted market sales housing: is that sold at a discount of at least 20% below local market value. Eligibility is determined with regard to local incomes and local house prices. Provisions should be in place to ensure housing remains at a discount for future eligible households.

d) Other affordable routes to home ownership: is housing provided for sale that provides a route to ownership for those who could not achieve home ownership through the market. It includes shared ownership, relevant equity loans, other low cost homes for sale (at a price equivalent to at least 20% below local market value) and rent to buy (which includes a period of intermediate rent). Where public grant funding is provided, there should be provisions for the homes to remain at an affordable price for future eligible households, or for any receipts to be recycled for alternative affordable housing provision, or refunded to Government or the relevant authority specified in the funding agreement.

2.2 The terms 'affordability' and 'affordable housing' have different meanings. 'Affordability' is a measure of whether housing may be afforded by certain groups of household, with reference to local incomes and house prices. 'Affordable housing' refers to particular products outside the main housing market.

3. Policy Context

National Policy

- 3.1 The revised NPPF 2021 provides the national policy context for the provision of housing, this is further supported by Planning Practice Guidance (PPG). The relevant sections of the PPG include those that relate to First Homes, Housing Needs of Different Groups and Planning Obligations. The PPG is an on-line resource and is updated as required.
- 3.2 Chapter 5 of the NPPF '*delivering a sufficient supply of homes*' outlines the government objective of boosting the supply of homes, this includes ensuring the needs of groups with specific housing requirements are addressed.
- 3.3 Paragraph 62 states that *"the size, type and tenure of housing needed for different groups in the community should be addressed and reflected in planning policies (including but not limited to, those who require affordable housing, families with children, older people, students, people with disabilities, service families, travellers, people who rent their homes and people wishing to commission or build their own homes)."*
- 3.4 Paragraph 63 outlines that where a need for affordable housing is identified, planning policies should specify the type of affordable housing required (as outlined by the definitions shown in Annex 2 of the NPPF and replicated in Chapter 2 of this SPD) and expect it to be met on site unless:
- Off-site provision or appropriate financial contribution in lieu can be robustly justified; and
 - The agreed approach contributes to the objective of creating mixed and balanced communities.
- 3.5 The provision of affordable housing can only be sought for major developments, unless in designated rural areas (planning policies can provide a threshold). Where vacant buildings are being reused or redeveloped, affordable housing contributions should be proportionate (paragraph 64 of NPPF). Footnote 30 clarifies that this contribution should be equivalent to the existing gross floorspace of the existing buildings. This does not apply to vacant buildings which have been abandoned.
- 3.6 Paragraph 65 states that major development involving the provision of housing, should expect at least 10% of the total number of homes to be available for affordable home ownership, unless this would exceed the level of affordable housing requirement in the area or significantly prejudice the ability to meet the identified affordable housing needs of specific groups. Exemptions to this 10% requirement should be made where the development proposes:
- Solely Build to Rent homes;

- Specialist accommodation for groups of people with specific needs;
- Developed by people who wish to build/commission their own homes; or
- Exclusively for affordable housing, an entry level exception site or a rural exception site.

3.7 Paragraph 78 also advises that a Rural Exceptions Site policy may be appropriate to provide for the local housing needs of rural communities.

First Homes

3.8 The Government introduced a new initiative known as First Homes via a Written Ministerial Statement and updates to the PPG with affect from 28 June 2021.

3.9 First Homes are a specific type of discounted market sale housing. The national standards for a First Home are that:

- a) It must be discounted by a minimum of 30% against the market value;
- b) After the discount has been applied, the first sale must be no higher than £250,000 (or £420,000 in Greater London); and
- c) The home is sold to a person who meets the First Home eligibility criteria.

3.10 First Homes are considered to meet the definition of 'affordable housing' for planning purposes and will form part of developer contributions to meet the local planning authority's affordable housing policy requirement.

3.11 Transitional arrangements are in place which mean that the First Home policy requirements would not apply to Local Plans and Neighbourhood Plans if submitted for examination before 28 June 2021.

3.12 As the Colchester Local Plan was submitted for examination during the transitional period in October 2017, it was not required to reflect the First Homes policy.

3.13 As set out in the Written Ministerial Statement (and PPG Paragraph: 019, Reference ID: 70-019-20210524), where Local and Neighbourhood Plans are adopted under the transitional arrangements, the First Homes requirements will not need to be applied when considering planning applications in the Plan area until the First Home requirements are introduced through a Local Plan update or review.

3.14 As the Colchester Local Plan was examined under the transitional arrangements for Local Plans, the transitional arrangements for decision making will also apply. Therefore, planning applications in Colchester, will not be required to include First Homes until such time as the Local Plan is updated. This will also apply for entry level exception sites.

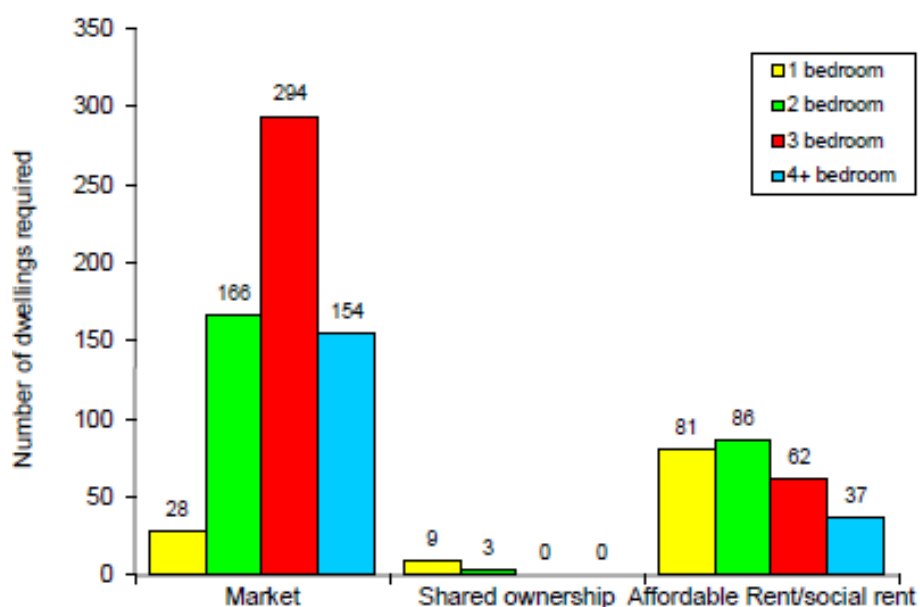
Colchester Local Plan

- 3.15 Colchester Borough Council has a unique situation with regard to plan making. The Council worked in collaboration with Braintree and Tendring District Councils on strategic cross boundary issues for North Essex. This resulted in a strategic Section One of the Local Plan which is shared by all three Local Planning Authorities. This was Adopted by Colchester Borough Council on 2 February 2001.
- 3.16 Section Two of each authorities Local Plan includes individual local authority policies and allocations. The Colchester Local Plan Section 2 was adopted on 4 July 2022.
- 3.17 The Colchester Local Plan Section 2 informs development in the Borough over the period 2017 to 2033 and includes new housing allocations to meet the predicted growth of the Borough over that period.
- 3.18 Policy DM8 – Affordable Housing, provides guidance on the local requirement for affordable housing, including a 30% affordable housing provision on sites of 10 or more dwellings (major development) in urban areas and above 5 units in designated rural areas. This reflects the updated Strategic Housing Market Assessment and evidence on the overall quantum of housing requirements contained in the Objectively Assessed Housing Need Study. The Policy was also informed by viability work. Further detail is contained in Chapter 4 below.
- 3.19 A Full extract of Policy DM8 can be found in Appendix B.

4. Evidence Base

- 4.1 In 2015 the Braintree, Chelmsford, Colchester and Tendring Housing Market Area updated the report for both the [Objectively Assessed Housing Needs Study \(OAN\)](#) (Peter Brett Associates, July 2015) and [Strategic Housing Market Assessment Update \(SHMA\)](#) (HDH Planning and Development Ltd., December 2015). The OAN Study was further [updated](#) in November 2016 (Peter Brett Associates) to review the findings of the original report in light of new evidence and produce a revised housing needs assessment for the same period 2013-2037. This ensures compliance with paragraph 47 and 50 of the NPPF 2012. It should be noted that as the Local Plan was submitted before 24th January 2019, the standard methodology was not used within these reports.
- 4.2 The SHMA forms the main Evidence Base for the Council's assessment of affordable housing provision. The SHMA identified an overall level of need of 278 affordable dwellings (266 rent and 12 shared ownership) per year between 2013 and 2037 (based on an OAN housing need figure of 920 dwellings per annum). See Figure 1 below. The SHMA also outlines that an additional 94 sheltered and extra care housing units should be provided annually within the identified OAN. However, the total is dependent on future patterns of demand amongst potential residents of this accommodation increasing notably beyond current levels.

Figure 1: Annual requirement for all new housing in Colchester (SHMA Update, 2015).



- 4.3 The SHMA concludes that a figure of 30-35% affordable housing provision would be appropriate.
- 4.4 To support the Local Plan, a [Viability Assessment](#) by Hyas (April 2017) and [Economic Viability Study](#) for Colchester by The Three Dragons and Troy Planning +

Design (June 2017) were prepared. Both reports demonstrate that the Local Plan Policies in relation to affordable housing provision requiring 30% for new dwellings of more than 10 units and the Garden Communities are financially viable and achievable.

- 4.5 The Economic Viability Study for Colchester also found that a requirement of 30% affordable housing for sites of 6 to 10 units in designated rural areas is achievable.

- 4.6 The study modelled affordable housing at 30% and 35% in line with the recommendations from the SHMA. A value lower than this was not assessed due to initial findings demonstrating this was not necessary. The affordable units were split 80/20 between rented and shared ownership tenure as this best reflects the requirements of the registered providers to develop affordable housing schemes that meet their financial criteria whilst addressing the high need for affordable rented tenure identified in the SHMA.

- 4.7 The [Housing White Paper](#) (February 2017) suggested that all sites over 10 dwellings may have to meet a requirement for 10% of units to be affordable home ownership. This requirement was included in the 2019 NPPF, as paragraph 64 states that where major development includes the provision of housing, at least 10% of the homes should be available for affordable home ownership (as part of the overall affordable housing contribution from the site). At the time of the Economic Viability Study, this was not reflected in national policy, however the requirement was considered in the assessment as a result of the Housing White Paper. Viability of the schemes assessed in the study would not be affected for sites over 10 dwellings providing 10% affordable home ownership. For smaller sites the proportion of intermediate units may need to be increased, but this will not have an adverse impact.

- 4.8 The SHMA indicated a shortfall for all accommodation sizes with the greatest net need varying upon tenure type. For market housing, the greatest need is for three-bedroom properties, for affordable rent/social rent the greatest need is for two-bedroom properties and for shared ownership its one-bedroom properties. The Council consider this overall need is best met if the affordable housing provision is informed by the latest assessment of local market conditions, the overall housing mix of the scheme, housing need and shortages relative to supply in determining the optimum affordable housing mix.

5. Delivery of Affordable Housing

- 5.1 The Council will expect the provision of affordable housing for sites above the policy thresholds to be provided on the proposed development site. The Council also expects that affordable housing should be provided without any form of public subsidy.
- 5.2 Affordable housing will be expected to be delivered on new build sites and when buildings are converted to a residential use or where a change of use is made from any residential use with shared facilities (such as bed-sit accommodation, or a care home) to independent residential units with separate facilities. Units may also be created when a private dwelling is converted into flats. The policy will apply in these circumstances to any net increase where the resulting number of units is above the threshold.
- 5.3 Negotiation with the applicant will be undertaken to confirm the final mix of affordable housing types/tenure. In schemes over 15 units, affordable housing should be provided in more than one single parcel. The affordable housing mix on any site should normally be “pepper potted” throughout the scheme in groups, the size and location of which should be discussed and agreed with the Council.
- 5.4 The affordable housing provision should proportionally reflect the dwellings provided on the overall scheme, however this should be informed by the latest assessment of local market conditions, housing need and shortages to determine the most appropriate mix.
- 5.5 Proposals that, in the opinion of the Council seek to under-develop or split sites into smaller land parcels in order to avoid providing affordable housing on site will be refused planning permission unless a proportionate number of affordable units are provided.
- 5.6 The Council has an ongoing need for affordable housing for wheelchair users. In accordance with Policy DM12; 95% of affordable housing should meet a minimum of Building Regulations Part M4 Category 2 and 5% of affordable homes should meet Part M4 3 (2) (b) or Part M4 3 (2) (a) as agreed with the Council in accordance with identified need. Further information regarding specialist residential accommodation, will be provided in the Self and Custom Build and Specialist Housing SPD.

Calculating Number of Affordable Units

- 5.7 Allocations within the Local Plan are expected to comply with Policy DM8 which requires 30% affordable housing for developments of 10 or more dwellings.
- 5.8 The number of dwellings to be provided as affordable housing in any one instance will be calculated by rounding up to the nearest whole number.
- 5.9 The affordable housing mix should be no less than 80% affordable rent or social rent and no more than 20% as other affordable tenures including shared ownership and other routes to home ownership. Regard will also be had to the requirements of

paragraph 65 of the NPPF and the Colchester affordable housing need.

5.10 The affordable housing provision applies to the total number of dwellings across the development; it does not only apply to the part of the development above the relevant threshold.

5.11 Examples of calculating the number of affordable houses is outlined in Table 1 below.

Table 1 – Affordable Housing Calculation Examples

Policy Reference	AF Requirement	Total Units	Calculation	Affordable Units Required
DM8	30%	6	$6 \times 30/100 = 1.8$	2
DM8	30%	30	$30 \times 30/100 = 9$	9

Off Site Affordable Housing and Commuted Sums

5.12 In exceptional circumstances the Council may accept that on-site provision is not appropriate, for example where there is a proposal that includes a significant proportion of studio-flats or bed-sits, which do not meet affordable housing needs.

5.13 In these circumstances, the provision of affordable units elsewhere will only be acceptable where each of the following are met:

- An alternative site or sites have been identified which would enable affordable housing provision that matches what would have been provided on the original site and is appropriate to the identified local housing needs to be met;
- The alternative site(s) can deliver the off-site provision in an appropriate timescale and in an appropriate locality elsewhere within the Borough;
- The off-site affordable housing provision is deliverable prior to the on-site market development being completed;
- The number of affordable units will reflect the benefit the applicant gains through using 100% of the site for market housing compared with on-site affordable housing is provided; and
- The off-site provision will be in addition to the affordable housing that would normally have been required for the alternative site.

5.14 In circumstances where the Council accepts that the provision of affordable housing cannot be provided on site and an alternative site is not available or

acceptable to the Council, the applicant will be required to pay a commuted sum (financial contribution) to the Council to be spent to provide affordable housing elsewhere in the Borough.

- 5.15** The level of payment in the form of a commuted sum will be based on the difference between the open market value for a similar size and type of property in the same area; and the transfer price paid by the registered provider. When calculating the appropriate commuted sum, the mix, ratio and type of dwellings will also be taken into account as if the units were to be provided on site to ensure that this as far as possible accurately replicates the cost of provision on site. See Table 2 below for example calculation.

Table 2 – Commuted Sums Example Calculations

Dwelling Type	Open Market Value	Transfer Price	Commuted Sum
Two Bedroom Flat	£220,000	£135,000	£85,000
Three Bedroom House	£340,000	£170,000	£170,000

Please note figures will be updated to reflect current house values at the point of adoption of this SPD, due to the current housing market situation

Viability

- 5.16** Developers should factor prospective planning obligations and contributions as well as other predictable development costs into land price negotiations. The provision of affordable housing will have an impact on the value of land for residential development, but this in isolation will not generally result in the development being uneconomic when compared to existing use value.
- 5.17** Paragraph 2 of the viability section of the Planning Practice Guidance (PPG) outlines that “*policy requirements, particularly for affordable housing, should be set at a level that takes account of affordable housing and infrastructure needs and allows for the planned types of sites and development to be deliverable, without the need for further viability assessment at the decision making stage*”. As such, the Council does not expect viability to be an issue at the decision-making stage for allocations within the Local Plan, as sites are expected to have been proven deliverable through plan making. Further viability assessments should therefore not be necessary to support a planning application.
- 5.18** Where there are concerns about viability, applicants are encouraged to consult with the Council at an early stage, to consider how any such constraints and barriers to delivery can be reduced.
- 5.19** A viability assessment evidencing the identified level of housing need, financial viability or deliverability, will be expected as part of any residential planning application where a policy compliant level of affordable housing is not included. In accordance with paragraph 58 of the NPPF, all viability assessments will be made publicly available via the planning portal as part of the documents submitted in support of a planning application. The assessment will be scrutinised by the Council’s approved viability

assessor, at a cost to be borne by the applicant, and form part of the decision-making process in accordance with national planning policy and guidance.

- 5.20 Where it is demonstrated that the scale of affordable housing provision and other policy burdens would result in the proposed development not being financially viable, the Council may consider a lower contribution, in exceptional circumstances only.

Exceptions to Affordable Housing Policy

- 5.21 Certain forms of residential accommodation will not be subject to the provision of affordable housing or a financial contribution towards it. These will include care homes, hostels, student housing, residential schools and colleges (where the accommodation is directly linked to educational facilities on site) and military housing, provided that the proposed accommodation does not fall within use class C3 and, that a planning condition is to be imposed limiting the accommodation to these specific users. The provision of any of these forms of residential accommodation will not count towards the overall provision of affordable housing in the Borough. Any self-contained use class C3 units (dwelling houses) provided as part of these proposals will be expected to comply with the affordable housing requirements.
- 5.22 Replacement single dwellings will not need to make provision, unless additional dwelling units above the thresholds are being created. Where additional units are being created, then the affordable housing calculation will be applied across the whole site to the net increase in dwelling numbers where policy compliant.
- 5.23 Extensions to existing dwellings will not need to make a contribution; unless separate units of accommodation with their own facilities, above the thresholds, are being created and this is not for use by a dependent relative of the occupants of the main dwelling.

Rural Exception Sites

- 5.24 Policy DM8 supports affordable housing development on rural exception sites. However, these must be sites that are contiguous with or adjacent to existing village settlement boundaries and address a local need that has been robustly demonstrated by way of a local housing needs survey and development is supported by the Parish Council on behalf of their residents.
- 5.25 The Rural Community Council for Essex (RCCE), an independent charity, employs a Rural Housing Enabler who works with rural communities, providing independent advice and support, acting as a facilitator and helping them through the process of providing affordable housing. The Rural Housing Enabler has the appropriate level of expertise to carry out a Local Housing Needs Survey, that will establish how many people in the parish need housing and the most appropriate tenure. This information is needed to support a planning application for rural exception housing.
- 5.26 The Council encourages all applicants proposing affordable housing on rural

exception sites to work with a registered provider that supports the work of the Rural Housing Enabler employed by the RCCE. These registered providers have experience in delivering affordable housing in rural areas and work within an agreed framework.

- 5.27 To inform the prioritisation and allocation of dwellings in rural areas, the survey analysis should identify types of local connection that households in housing need have within the Parish.
- 5.28 The Local Housing Needs Survey should be up to date and reflect the current needs of the area. A Local Housing Needs Survey which predates the planning application by five or more years will not be considered adequate to support a development proposal.
- 5.29 It is expected that the proposed dwellings will all remain permanently available to local people on low incomes who cannot afford market housing. Proponents of the scheme (developers/landowners/housing associations etc.) will need to enter into a Section 106 Agreement with the Council to ensure they remain permanently available to local people on low incomes.
- 5.30 The dwellings will be allocated to persons with a local connection to the Parish who are in need of an affordable dwelling and are unable to obtain a property on the open market.
- 5.31 The mechanism for allocating the dwellings will be specified in the S106 Agreement. This will prioritise applicants with a local connection in the first instance and will be agreed between the Local Authority and the Parish Council on a scheme by scheme basis.
- 5.32 In order to ensure that the units remain permanently available as affordable housing, on each occasion that it is necessary to reallocate any of these units, the procedure for allocation will follow the same principles set out above. In the instance where there is no need within the Parish, this will be cascaded to an adjoining Parish within the Borough.
- 5.33 In order for the Council to assess if an open market element of a rural exception site is justified, any proposal including this must also provide a robust, independently prepared and audited viability assessment of the proposed development. The extent of the funding gap to be bridged in order for the proposal to be viable, including the income from cross-subsidy generated through open-market sales, that will assist in creating the additional scheme revenue that can fund the affordable housing on the site without requiring additional public subsidy, should be clearly set out. As outlined in paragraph 5.18 above, the assessment will be scrutinised by the Council's approved viability assessor, at a cost to be borne by the applicant, and form part of the decision-making process in accordance with national planning policy and guidance.

Vacant Building Credit

- 5.34 Vacant building credit was introduced to promote development on brownfield sites. It allows the floorspace of existing buildings that are to be redeveloped to be offset against the calculations for section 106 affordable housing requirements. It applies to any building that has not been abandoned and is brought back into any lawful use or is demolished to be replaced by a new building.
- 5.35 The PPG explains that existing gross floorspace (assuming it has not been abandoned) should be credited against that of the new development. Where there is an overall increase in floor space in the proposed development, the local planning authority should then calculate the amount of affordable housing contribution or provision required from the development as set out in their local plan on the basis of that additional floorspace.
- 5.36 The example given in the PPG is as follows: 'where a building with a gross floorspace of 8,000 square metres is demolished as part of a proposed development with a gross floorspace of 10,000 square metres, any affordable housing contribution should be a fifth of what would normally be sought'.
- 5.37 For example, the revised affordable housing calculation for a proposal of 60 dwellings including 4,500sqm proposed gross internal area, where the existing vacant gross internal area is 3,000sqm equates to a 33% difference. This would result in the requirement of 6 affordable dwellings (the remaining 54 units would be market dwellings).
- 5.38 For wholly residential schemes, the total proposed gross internal area will be the area of all dwellings. Where flatted development is included within the development, the proposed gross internal area will include all communal and circulation areas. For mixed use schemes, the proposed gross internal area of the proposed residential elements will be included.
- 5.39 Where the revised affordable housing sought does not result in whole numbers, the number of affordable dwellings will be rounded up to the nearest whole number to achieve the required percentage provision (see paragraph 5.37 above).

6. The Planning Process

- 6.1 Prospective applicants are encouraged to discuss their proposals at the earliest possible stage; through a preliminary enquiry (pre-application advice). Further information about this can be found on our [website](#).
- 6.2 Engaging in a preliminary enquiry allows the design and potential 'heads of terms' of the S106 Agreement to be factored into the formulation of the development proposals at an early stage and can save time later in the process.
- 6.3 As part of the submission of a planning application on above threshold - level sites, the Council will expect an affordable housing statement. This should provide details of the number, mix, tenure, unit sizes (including number of bedrooms and persons) of affordable homes and how this reflects the overall mix, etc, along with the location of these units within the site. Applications should refer to the proportion of affordable units, specify how the mix and tenure will reflect that of the scheme as a whole and, express willingness to pepper pot across the site.
- 6.4 Where an application is received in outline, the appropriate contribution will be reserved through a planning obligation, so that it can be resolved when a detailed or reserved matters application is made, when the size of the development and the appropriate level of contribution will be known.
- 6.5 In addition to the provisions of this SPD, proposals for new housing will also be considered having regard to other relevant local policies, which include requirements for other planning contributions. Applicants are advised to seek preliminary advice from the Council where there is any doubt as to the policy considerations that will apply, prior to formally submitting their planning applications, to ensure all relevant policies are addressed.

7. Planning Obligations

- 7.1** In accordance with paragraph 55 of the NPPF, Local Planning Authorities should consider where unacceptable development could be made acceptable through the use of planning obligations, where it is not possible to address the unacceptable impact through planning conditions.
- 7.2** Under section 106 of the Town and Country Planning Act 1990, the following obligations may be secured to mitigate the impacts of a development proposal, in terms of specific housing details:
- Precise scale and scope of the form, delivery and management of the affordable housing in relation to the specific circumstances of the development. This can include:
 - The number, size, tenure and siting of the affordable housing;
 - The phasing of the development;
 - Appropriate trigger points for the provision of affordable housing to an affordable housing provider, to ensure that it is provided in a timely manner in relation to the market housing and delivered in full before an agreed percentage of the market housing has been completed;
 - Eligibility and allocation restrictions on occupancy or disposal to meet local housing need;
 - Mechanisms for ensuring that the affordable housing dwellings are used solely and exclusively for affordable housing in perpetuity;
 - Compliance with public subsidy funding conditions when public subsidy is allocated;
 - Provision of a financial contribution where applicable;
 - Ensure intermediate affordable units for shared ownership (sale) remain affordable;
 - The Council expect that the ownership of the affordable housing units will be transferred to a Housing Association/Registered Provider.
- 7.3** The Council will draw up the S106 Agreement and any related nomination agreement. The Council's legal costs related to these, will be payable by the developer on an indemnity basis on completion of the S106 Agreement.
- 7.4** Proposed variations to the terms of a completed S106 can only be agreed by a deed of variation. Requests to vary agreements should be made to the planning officer in the first instance. The full costs of the variation are payable by the applicant.

Appendices

A. Glossary

Development Plan – This includes adopted Local Plans and Neighbourhood Plans, as defined in section 38 of the Planning and Compulsory Purchase Act 2004. The Development Plan is the starting point for decision making.

Financial Contribution – The sum of money that a landowner or developer is required to pay to the Council to ensure the delivery of services and infrastructure, including affordable housing, needed as a result of planning permission being granted.

Homes England – An executive non-departmental public body to accelerate housing.

Housing Association – Independent societies, bodies of trustees or companies established for the purpose of providing low-cost social housing for people in housing need. See Registered Provider.

Nomination Agreement - An agreement negotiated between the Council and a Registered Provider which guarantees the Council's ability to access Registered Providers' owned new build accommodation for applicants on the Council's Housing Register.

Preliminary Enquiry – An enquiry submitted to the Council in writing in advance of a planning application being submitted, to obtain an informal officer view on the likelihood of obtaining planning permission and any particular requirements and/or planning obligations that the Council is likely to seek for the proposal.

Registered Provider – A provider of social housing, registered with Tenant Services Authority under powers in the 2008 Housing and Regeneration Act. This term encompasses housing associations, trusts, cooperatives and companies.

Rural Housing Enabler – A Rural Community Council of Essex (RCCE) employee who works with rural communities providing independent advice and support, acting as a facilitator and helping them through the complicated process of providing affordable housing.

Regulator of Social Housing – regulation of providers of social housing to promote a viable, efficient and well-governed social housing sector able to deliver homes that meet a range of needs.

Section 106 Agreement - Legal agreement under Section 106 of the Town and Country Planning Act 1990. Used as a means of securing the provision of affordable housing and other contributions.

Strategic Housing Market Assessment (SHMA) – A Strategic Housing Market Assessment is a comprehensive study of the local housing market, using surveys and involving wide ranging stakeholder participation, to produce an assessment of housing needs and market housing within the local area.

Social Housing - Housing that is cheaper to rent, than privately rented housing and usually provides a longer term tenancy.

Staircasing – The facility that enables a householder to purchase an increased proportion of a shared ownership (intermediate affordable) dwelling.

Statement of Community Involvement (SCI) - This sets out the standard that the Local Planning Authority intend to achieve in relation to involving the community and all stakeholders in the preparation, alternation and continuing review of all Local Development Plan Documents and in significant planning applications, and also how the local planning authority intends to achieve those standards. The SCI will not be a Development Plan Document but is subject to independent examination.

Supplementary Planning Document (SPD) – A document produced by the Local Planning Authority to add further detailed guidance and information on a particular subject such as Sustainable Construction or Housing. An SPD is subject to a formal consultation period and then is used as a material consideration when determining planning applications.

B. Colchester Local Plan Section 2 Policy DM8 – Affordable Housing

The Council is committed to improving housing affordability in Colchester. Accordingly 30% of new dwellings (including conversions) on housing developments of 10 or more dwellings (major developments) in urban areas and above 5 units in designated rural areas (in accordance with Planning Policy Guidance), should be provided as affordable housing (normally on site).

Where it is considered that a site forms part of a larger development area, affordable housing will be apportioned with reference to the site area as a whole.

This level balances the objectively assessed need for affordable housing in the Borough established by the evidence base, against the requirement for flexibility to take account of changing market conditions. At present the overwhelming need in Colchester is for affordable rented properties, which should be reflected in development proposals. For sites where an alternative level of affordable housing is proposed below the target, it will need to be supported by evidence in the form of a viability appraisal.

In exceptional circumstances, where high development costs undermine the viability of housing delivery, developers will be expected to demonstrate an alternative affordable housing provision.

The Local Planning Authority will require developments to integrate affordable housing and market housing, with a consistent standard of quality design and public spaces, to create mixed and sustainable communities. The affordable housing provision should proportionately reflect the mix of market units unless otherwise specified by the Local Planning Authority. In schemes over 15 units the affordable housing should be provided in more than one single parcel. Elsewhere the affordable housing mix on any site should normally be “pepper potted” throughout the scheme in groups, the size and location of which should be discussed and agreed with the Local Planning Authority.

Affordable housing development in villages will be supported on rural exception sites adjacent or continuous to village settlement boundaries or where it will enhance or maintain the vitality of rural communities, provided a local need is demonstrated by the Parish Council on behalf of their residents, based on evidence gained from an approved local housing needs survey. A proportion of market housing which facilitates the provision of significant additional affordable housing may be appropriate on rural exception sites. Information to demonstrate that the market housing is essential to cross-subsidise the delivery of the affordable housing and that the development would not be viable without this cross-subsidy will be required. At the scheme level, the number of open market units on the rural exception site will be strictly limited to only the number of units required to facilitate the provision of significant affordable housing units on a rural exception site. The number of affordable units and total floorspace on a site should always be greater than the number of open market units or floorspace. The actual number will be determined on local circumstances, evidence of local need and the overall viability of the scheme.

3 October 2022

Report of	Assistant Director of Place and Client Services	Author	Karen Syrett ☎ 282477
Title	Review of Enforcement Policy		
Wards affected	All wards		

1. Executive Summary

- 1.1 This report seeks approval of the Committee to adopt a new Planning Enforcement Policy for Colchester.
- 1.2 The Policy sets out what constitutes a breach of planning, when enforcement action should be taken, the types of action available and the limitations.

2. Recommended Decision

- 2.1 To adopt the revised Policy.

3. Reason for Recommended Decision

- 3.1 To ensure the Council has up to date guidance on which to base decisions.

4. Alternative Options

- 4.1 The Committee could decide not to change the existing Policy or to make further changes to the proposed Policy.

5. Background Information

- 5.1 An effective planning enforcement function is essential to the credibility of any planning service and to any Council. Fair and effective planning enforcement is vital in protecting the quality of life for the people who live, work and visit Colchester; and the quality of the Borough's built and natural environment.
- 5.2 The National Planning Policy Framework (NPPF) recognises the importance of Planning Enforcement at Paragraph 59;

Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.

- 5.3 In response to this national requirement, the Council published an Enforcement Policy in 2014 and this is now in need of review. Although much of the document remains fit for purpose there are some changes which are summarised below;
- An increased emphasis on the fact that the Council will not condone breaches of planning control but that it should only take action where it is expedient to do so
 - More detail about what constitutes a breach of planning control
 - Reference to updated guidance contained in Planning Practice Guidance (PPG)
 - A new requirement to submit an observation log
 - A revised commitment to how we will keep people informed
 - A new section aimed at people who are the subject of a complaint
 - More detail about what constitutes harm.
- 5.4 The Policy also makes clear that Planning Enforcement can be a complex and difficult process. Enforcement Officers often come under unfair pressure and scrutiny, but it is important that everyone recognises the legislative constraints they are working under. In Colchester, the team is small and has a large workload and therefore prioritisation does have to take place. There will also be many instances where it is not appropriate to take enforcement action, and this can be difficult for people to understand. The revised Policy is intended to set out when it will be appropriate to take action and where it will not whilst at the same time making clear that the Council will not condone wilful breaches of planning control.
- 5.5 Following the Queen's Speech, the Government published the Levelling Up and Regeneration Bill on 11 May 2022. This is available online via <https://publications.parliament.uk/pa/bills/cbill/58-03/0006/220006.pdf>
- 5.6 A Policy Paper has also been published which summarises the steps being taken by Government through the Levelling Up and Regeneration Bill and other legislation and policy. This is also available online - <https://www.gov.uk/government/publications/levelling-up-and-regeneration-further-information/levelling-up-and-regeneration-further-information>
- 5.7 The Levelling Up and Regeneration Bill (The Bill), is a key component of the wider programme to level up the country, as set out in the [Levelling Up White Paper](#) published

in February 2022. The Bill also incorporates some of the proposals for planning reform outlined in the [Planning for the Future White Paper](#) published in August 2020, which support the approach to Levelling Up.

5.8 The Bill contains 3 parts, with Chapters 2 and 7 being those most closely related to Planning and one of the areas covered is Enforcement. There are a number of ways in which the Bill and Policy Paper would change planning enforcement if they are enacted:

1. Introduction of commencement notices which would be required when a scheme with planning permission starts on site and the Bill will make it easier for LPAs to issue completion notices to developers to require them to complete their projects.
2. Amendments and strengthening of powers and sanctions available to LPAs to deal with individuals who fail to abide by rules and processes associated with the planning system (Enforcement). This includes:
 - Closing of existing 'loopholes' in enforcement which can prolong unauthorised development such as tightening the scope of appeals against enforcement notices so there is only one opportunity to obtain planning permission retrospectively;
 - Extending time period for all breach investigations to 10 years (currently 4 years);
 - Introduction of enforcement warning notices to allow LPAs to formally warn landowners that a breach has occurred providing an opportunity to remedy through a retrospective planning application;
 - Doubling fees for retrospective planning applications;
 - Increasing fines associated with certain planning breaches. Fines for a number of breaches including breach of condition will rise from a maximum of £2,500 to be unlimited;
 - Extending temporary stop notices to be in place for up to 56 days (currently 28 days); and
 - The Planning Inspectorate will be able to dismiss enforcement appeals where the appellant is causing unnecessary delays.

5.9 Changes to the planning procedures will begin to take place from 2024, once the Bill has received Royal Assent and a series of associated regulations and changes to national policy are in place. Many of the proposals in the Bill will be subject to further consultation so the Policy may need further review once the outcomes are known.

6. Equality, Diversity and Human Rights implications

6.1 An Equality Impact Assessment has been prepared for the Local Plan and is available to view on our website.

<https://cbccrmdata.blob.core.windows.net/noteattachment/Equality%20Impact%20Assessment%20June%20202017.pdf>

7. Strategic Plan References

7.1 The Strategic Plan is relevant, in particular in contributing towards priorities under the themes:

- Delivering homes for people who need them;
- Growing a fair economy so everyone benefits; and

- Celebrating our heritage and culture.

8. Consultation

8.1 N/A

9. Publicity Considerations

9.1 The report is intended to provide helpful guidance and is unlikely to generate publicity.

10. Financial implications

10.1 N/A

11. Health, Wellbeing and Community Safety Implications

11.1 Having an effective Enforcement Policy can contribute to ensuring health, wellbeing and community safety.

12. Health and Safety Implications

12.1 Having an effective Enforcement Policy can contribute to ensuring health and safety are adhered to.

13. Risk Management Implications

13.1 Having an effective Enforcement Policy can minimise risk associated with unauthorised development.

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, which are interdependent and need to be pursued in mutually supportive ways. These are economic, social and environmental objectives.

Appendix 1 – Colchester Enforcement Policy 2022

Colchester Borough Council

Planning Enforcement Policy 2022

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- 1.0 Introduction and Background
- 2.0 What is a breach of planning control?
- 3.0 Reporting an Alleged Breach
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- 10.0 Monitoring and Reviewing Enforcement Practice
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Appendices

- Glossary and Further Information
- Fourteen Day Observation Log

1.0 Introduction and Background

- 1.1 An effective planning enforcement function is essential to the credibility of any planning service and to any Council. Fair and effective planning enforcement is vital in protecting the quality of life for the people who live, work and visit Colchester; and the quality of the Borough's built and natural environment. A decision about enforcement can have implications for many people, either directly or indirectly. Residents and businesses alike have the right to expect that the Council will maintain the integrity of its planning processes and that enforcement matters will be dealt with fairly, equitably and effectively. This Policy offers guidance on what the Council's statutory obligations are, and what can be done under discretionary powers.

- 1.2 The National Planning Policy Framework (NPPF) recognises the importance of Planning Enforcement at Paragraph 59;

Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.

- 1.3 Planning Practice Guidance (PPG) contains more detail and clarifies that a breach of planning control is defined in [section 171A of the Town and Country Planning Act 1990](#) as:

- the carrying out of development without the required planning permission; or
- failing to comply with any condition or limitation subject to which planning permission has been granted.

Any contravention of the limitations on, or conditions belonging to, permitted development rights, under the [Town and Country Planning \(General Permitted Development\) \(England\) Order 2015](#), constitutes a breach of planning control against which enforcement action may be taken.

- 1.4 The Council will not condone wilful breaches of planning control and will exercise its discretion to take enforcement action if it is considered expedient to do so. The Council will investigate all reports about alleged breaches of planning control, except those reported anonymously, to determine whether a breach has as a matter of fact occurred, and if it has, will then determine the most appropriate course of action, mindful to the basic principles of enforcement.

2.0 What is a breach of planning control?

- 2.1 Planning enforcement aims to enforce against planning breaches, which is described in the Town and Country Planning Act 1990 (“the 1990 Act”) as; “carrying out development without the required planning permission; or failing to comply with any condition or limitation subject to which planning permission has been granted’(s.171A).
- 2.2 Section 55 of the 1990 Act defines development as; “the carrying out of building, mining, engineering or other operations in, on, or over land, or the making of any material change of use of any building or other land.” This could involve such matters as the unauthorised erection of a building or an extension to a building, a material change of use of land or a building, or the display of unauthorised advertisements.
- 2.3 Other breaches of planning control may consist of the following:
- Unauthorised works to Listed Buildings - most works to Listed Buildings require consent and it is a criminal offence to carry out works without such consent. Prosecution proceedings can be instigated under Section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Alternatively, the Act also gives local planning authorities the power to serve Listed Building Enforcement Notices to which there is a right of appeal.
 - Unauthorised works to trees subject of a Tree Preservation Order (TPO) or in a Conservation Area - it is an offence to carry out unauthorised work to trees protected by a Tree Preservation Order. Where works are proposed to trees in a Conservation Area, the Local Planning Authority should be notified, and permission obtained in advance. In both instances the Council has the power to prosecute offenders and require the planting of replacement trees.
 - Unauthorised demolition of a building which is located within a Conservation Area - It is a criminal offence to demolish a building, which is located in a Conservation Area, without consent. Breaches of Planning Conditions - A breach of condition notice can be served where there is a failure to comply with any condition imposed on the grant of planning permission. There is no right of appeal against a breach of condition notice.
 - Untidy land where it affects the amenity of the area - where land or premises have become an eyesore, the Local Planning Authority has the power to serve a notice under section 215 of the Town and Country Planning Act, requiring steps to be taken to remedy the condition of land. There is a right of appeal to the Magistrates Court.
 - Deliberate concealment of unauthorised building works or changes of use - where a person deliberately conceals unauthorised development, the deception may not come to light until after the time limits for taking enforcement action (Section 171B of the Town and Country Planning Act 1990) have expired. A Planning Enforcement Order enables the council to take action in relation to an apparent breach of planning control notwithstanding that the time limits may have expired.

- Not building in accordance with the approved plans that form part of a planning permission - In some cases this can result in the whole development being deemed as unauthorised.
- Unauthorised engineering operations, such as raising of ground levels or earth bunds - these matters may involve engagement with the Environment Agency.

2.4 Carrying out development without an appropriate planning permission or failing to comply with a condition are not criminal acts. However, other breaches under different sections of the Planning Act and under Listed Building or Advertisement legislation do carry a criminal liability. The following are examples of matters that may be criminal offences:

- unauthorised advertisements
- unauthorised work to an Listed Building (including works not in accordance with a Listed Building Consent)
- unauthorised demolition of an unlisted building in a Conservation Area
- unauthorised works to “protected” trees (including works not in accordance with an approved consent).

2.5 Some common examples of things that we receive, but that are not planning matters and which we subsequently do not investigate include:

- Boundary wall disputes or other land ownership disputes;
- Private covenants;
- Obstructions, parking and traffic;
- Business competition
- Hobbies or activities that take place as part of the residential enjoyment of a person’s home.
- Site security
- General pollution causing fumes, odours and noise nuisances (e.g. bonfires).
- Graffiti and anti-social behaviour
- Dangerous structures
- Sewers, soakaways and most other drainage matters

2.6 Some of these issues can be investigated by other Council Services. However, they are not planning enforcement issues and should not be raised via the enforcement team. Please refer to the Council’s website (www.colchester.gov.uk) for more information.

2.7 The Council’s resources are limited and it is therefore necessary to target available resources to have maximum effect. Attention will be focussed where there is the most harm in planning terms (i.e. to heritage assets, public amenity or the wider environment). Consequently, enforcement actions will not be influenced by who is complaining or how vociferously the complainants are. This will help create an efficient yet effective Planning Enforcement process (see para. 5.7 below)

3.0 Reporting an Alleged Breach

- 3.1 Anyone can report an alleged breach of planning control if they are concerned that one may have occurred. The simplest way to make a complaint is by using the online complaint form on the Council's website [Planning enforcement complaint form \(snapsurveys.com\)](https://snapsurveys.com)
- 3.2 Only in cases of "emergency", such as where listed buildings are being demolished or trees are being removed, will complaints be dealt with by telephone. We can then attend the site before irreversible works are undertaken. Complainants will need to be in possession of as much relevant information as possible such as who, what, and where.
- 3.3 If your complaint involves a business operating from a residential property or other change of use, please complete the observation log for a 14-day period before submitting your complaint. Failure to do this could delay the investigation.
- 3.4 All complaints will be treated confidentially, however, complainants will be asked to identify themselves and provide an address and phone number so that they can be kept informed of progress. This information also assists Officers if they require further clarification from you about the complaint. The Council will use its discretion as to whether it will investigate anonymous complaints.
- 3.5 In all circumstances, as much information as possible should be provided to assist us investigate quickly, including information:
- about the nature of the complaint
 - the name and address of the alleged contravener
 - the location of the site
 - what has happened; for how long, or is happening now
 - an explanation of the harm that it is causing to you or to others
 - if you have observed works being carried out, a description of the people carrying out unauthorised works and/or any names on commercial vehicles etc
- 3.6 The Council is committed to the following timescales if you have made a complaint or reported something to us;
- We will let you know we have received your complaint within three working days of receiving it.
 - We will investigate all complaints by looking at the site and planning history and carrying out a site inspection if required. If there are planning enforcement issues, we will try to settle any disputes by coming to an agreement and without taking formal action, unless the matter is causing significant harm. If we need to take formal enforcement action, this may eventually result in the person concerned being prosecuted.
 - We will aim to make a decision within 8 weeks to take enforcement action, to negotiate an acceptable outcome, to invite a planning application or to close the case.
 - We will contact you when the case is closed, explaining why. We will not contact you between times unless we require further information.

- It is important to note that enforcement procedures can be extremely lengthy, and we cannot commit to resolve everything quickly, as much as we would like to.

4.0 If the Complaint is about you?

- 4.1 If you are visited or contacted by the Councils Enforcement Team they will explain that it is in response to an enquiry received by us concerning a potential breach of planning control. This is the first stage of an investigation into the alleged breach.
- 4.2 If no breach of planning control is identified the case will be closed and you will be notified.
- 4.3 If more information is required we will contact you and we may serve a Planning Contravention Notice (PCN) which is a legal document requiring you to answer a range of questions and return to us within 21 days.
- 4.4 Further details about the enforcement process if you are contacted by an Officer is available here

[Enforcement and post-permission matters - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/enforcement-and-post-permission-matters)

5.0 When is Enforcement Action Taken?

- 5.1 Enforcement action is discretionary. Once a breach of planning control has been identified, the extent of the breach must be assessed to establish what, if any, action should be taken to remedy the breach and whether it is considered expedient to do so. It is at the Council's discretion to use enforcement powers.
- 5.2 In accordance with section 172 of the 1990 Act 'expediency' is assessed with reference to national and local planning policies and to any other material considerations (e.g. amenity, design).
- 5.3 If it is likely that the unauthorised development would have been approved, had planning permission been initially applied for, it is unlikely we would take formal enforcement action. Taking enforcement action must be in the public interest. Enforcement action will not be taken simply because a breach has occurred.
- 5.4 In cases where it has been established that a breach of planning control has occurred at the initial stage, the Planning Enforcement Officer will undertake an assessment of expediency to determine which next course of action should be taken. An expediency test will usually involve the Planning Enforcement Officer assessing:
- Whether the breach is in accordance with the policies of the Local Plan.
 - The breach against any other material planning considerations.
 - Whether had a planning application been submitted before the development occurred, permission would likely to have been granted.
 - Whether the breach unacceptably affects public amenity.
 - Whether the breach unacceptably affects any existing land, use or buildings which merit protection in the public interest.
 - Whether action would be proportionate with the breach to which it relates.
 - Whether action would be in the public interest.
- 5.5 Planning Enforcement operates to protect the public interest. Therefore, whether or not breaches of planning control occurred in innocence or intentionally, the Council will have regard to the actual observed "harm" when deciding whether or not to take enforcement action. Similarly, it does not matter who has made the complaint, or who is alleged to have breached planning controls. All cases will be prioritised in terms of their perceived planning importance from the information supplied.
- 5.6 In planning terms harm could include (but is not exclusive to) the effect on residential amenities such as light and privacy, highway safety, impacts on the character of an area or wider environment, or conflicts with the policies in the Development Plan. Harm may also occur through unauthorised adverts or work to Listed Buildings. Consequently, the Council will set out to take full account of the "harm" being experienced by complainants, or to the environment itself. The assessment of harm does not include private interests, such as loss of value to property, competition, loss of views, trespass or breaches of covenants.
- 5.7 In 2014, the Council introduced a new harm assessment procedure in relation to the handling of alleged breaches of planning control. It assesses the planning harm caused by the breach and provides a process for prioritising workload.

- 5.8 The harm assessment is carried out when a breach of planning control has occurred, usually during the first site inspection. The scheme grades the “harm” against a series of scored planning criteria. The higher the score the more important it will be for officers to resolve the matter. Resolution may be through negotiation or by taking formal action. However, where no breach is found or a breach is considered to cause limited harm, the case may be closed with no further action deemed necessary.

6.0 When is it not appropriate to take Enforcement Action?

- 6.1 The Council will not condone wilful breaches of planning control. However, we will not consider taking formal enforcement action without first considering all the relevant planning circumstances of each case. We must investigate all complaints very carefully and allow enough time for the person concerned to carry out our instructions or appeal against our assessment.
- 6.2 Enforcement action should, be proportionate to the breach of planning control to which it relates and taken when it is expedient to do so. Where the balance of public interest lies will vary from case to case. In deciding, in each case and what is the most appropriate way forward, local planning authorities should usually avoid taking formal enforcement action where:
- there is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;
 - development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development;
 - the Council consider that an application is the appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed.
- 6.3 The Council cannot take enforcement action if the person has specific planning permission, or does not need planning permission, to carry out the work or change how a building is used.
- 6.4 Enforcement action cannot be taken against unauthorised developments that have been in place for four or more years, as these are considered to be ‘established’. Likewise, unauthorised ‘changes of use’ that have existed for a continuous period of over 10 years, are also considered to be ‘established’.
- 6.5 The Council cannot take enforcement action against things which do not fall within planning laws. These may include civil matters, such as boundary or ownership disputes, Party Wall Act issues and covenant issues. In these instances you are advised to seek legal advice.
- 6.6 Work inside a property which normally concerns Building Regulations rather than Planning.
- 6.7 Pollution and noise control which would normally fall under Environmental protection.
- 6.8 The Council may decide not to take enforcement action despite there being a breach because it is not considered expedient to do so.

7.0 Conducting Site Visits

- 7.1 Planning legislation gives authorised Officers rights to enter land and buildings, at any reasonable hour, to carry out investigations. Because of the nature of enforcement work it may be prudent not to give advance notice of an intended visit. Where access to a dwellinghouse is involved 24 hours notice must be given.
- 7.2 On site visits, Enforcement Officers will have regard various legislation including the Human Rights Act 1998 (HRA), the Regulation of Investigatory Powers Act 2000 (RIPA) and the Police and Criminal Evidence Act 1984 (PACE). Unreasonable refusal of entry to an officer investigating a complaint may result in legal action being taken.
- 7.3 Whenever possible, a person involved in an alleged breach of planning control will have the allegation explained to them and be asked to explain what has happened. Information obtained, including details of conversations and observations at site visits, including photos, plans, documents or other information will be carefully considered to determine whether a breach has occurred and what action should be taken. Sometimes it may also be necessary to carry out additional investigations after the site visit.
- 7.4 The Council will not tolerate any of its staff being threatened with or subjected to physical or verbal abuse in the course of the performance of their official duties and will take appropriate legal action.
- 7.5 Sometimes it will be necessary to take photos on a site visit . Photographic evidence that identifies an individual is regarded as personal data. Although, it is preferable to obtain the consent of the individual concerned before obtaining or using their personal data, it is recognised that this is not always possible. The Information Commissioner's Office has identified six situations where the consent of the subject can be dispensed with. In this context, there are two categories which the Council may wish to rely upon, namely:-
- 1) Legal Obligation basis

Under this category, the Council can rely upon the fact that it has a statutory obligation to ensure that illegal practices pertaining to animals within the borough are prevented and therefore the use of the personal data of the person responsible is necessary in order to provide evidence to substantiate the Council's case.
 - 2) Public Task

Where the Council is carrying out a task in the public interest or its official functions, personal data can be used. Again, the Council can argue that it is in the public interest to prevent what is perceived to be animal cruelty or neglect and the Council has an official duty to prevent such practices within its jurisdiction.
- In these instances the use of photographic evidence would be justified.
- 7.6 After the initial site visit, dealing with an enforcement complaint can become a lengthy and complex process. Various investigations may need to be carried out which could include inspection of the Council's records, interviews with the

alleged contraveners, complainants, and neighbours and liaison with other agencies.

8.0 Resolving a Breach through Negotiation

- 8.1 Where breaches occur, it does not automatically follow that formal action will be required. While breaches of planning control are not condoned, an enforcement notice will not normally be issued solely to regularise development which is likely to be acceptable on its planning merits. In such circumstances the Council will request an owner or occupier to seek retrospective planning permission. Where officers conclude that it is not expedient to take action the case will be closed even if the owner/occupier does not agree to submit an application to regularise the work.
- 8.2 Action taken, whether informal or formal, will be proportionate to the breach. Consequently, a technical breach of planning control, or one that causes little or no real harm is unlikely to warrant any significant action. Even when some harm is observed, there may still be solutions that would reduce this harm or remove it altogether. Therefore, in appropriate cases we will work with owners to regularise or remedy unauthorised works. A consideration will be whether we believe that co-operation will be forthcoming and that a solution could be achieved.
- 8.3 Informal resolution may involve the reduction or cessation of an unauthorised use, or the modification or removal of unauthorised operational development. Officers will have regard to the specific circumstances of each case and seek to put a reasonable timescale in place.
- 8.4 Where we are unable to negotiate an acceptable solution within a reasonable timescale, or it is clear at the outset that the breach is not capable of being remedied through negotiation, we will proceed with formal enforcement action where it is expedient to do so.

9.0 Taking Formal Enforcement Action

- 9.1 If the negotiated approach fails or is not feasible, it may be necessary to take formal enforcement action. The Council has a range of formal powers under the Town and Country Planning Act 1990 that it can use to remedy breaches of planning control. More details about these are contained in the Appendix.
- 9.2 The first step is usually to serve a statutory notice requiring information about the land, the people who have interests in it, and the alleged contravention to be provided. This and other formal notices (see Appendix C) may be used to establish the facts before deciding whether to take action. They are also used to obtain information required to ensure a notice is properly drawn up and served.
- 9.3 Failure to comply with the requirements of any notice within the specified period is a criminal offence and will usually be pursued through the Court. After any final compliance period the Council will consider bringing a prosecution in each case. In commencing any legal proceedings we need to be satisfied that there is sufficient

evidence to offer a realistic prospect of conviction and that the legal proceedings are in the public interest.

- 9.4 A variety of enforcement options exist, and the method chosen will reflect the type of development, degree of harm and individual circumstances. The scope of individual enforcement powers are covered in more detail in the Appendix and using the following links taken from Planning Practice Guidance Paragraph: 007 Reference ID: 17b-007-20140306;

- [No formal action](#)
- [Retrospective planning application](#)
- [Planning contravention notice](#)
- [Enforcement Notice](#)
- [Planning Enforcement Order](#)
- [Stop Notice](#)
- [Temporary Stop Notice](#)
- [Breach of Condition Notice](#)
- [Injunction](#)
- [Rights of entry](#)
- [Enforcement on crown land](#)
- [Listed Building enforcement](#)
- [Enforcement of hazardous substances control](#)
- [Unauthorised advertisements](#)
- [Enforcement and protected trees](#)

- 9.5 Unauthorised works carried out to a Listed Building and unauthorised demolition in a Conservation Area constitute offences in their own right and criminal proceedings may be initiated immediately. Each case will be considered on its merits and specialised advice obtained. Prosecution may not result in the harm to a heritage asset being remedied and it may be more appropriate to serve a Listed Building Enforcement Notice either instead of, or in addition to, prosecuting.

- 9.6 If an Enforcement Notice is served there is often a right of appeal. Appeals are handled by the Planning Inspectorate (PINS). Although it is frustrating, during the appeal process, the Notice is not in effect and the breach may continue. Complainants and other local residents may make representations to the Planning Inspectorate, but if they choose to do so, their identity will no longer be kept confidential. An appeal may result in the notice being upheld, dismissed or varied.

- 9.7 The Council maintains a public register of all enforcement notices and stop notices that have been served. These will appear in the land charge if the property is sold. Publicity will also be sought on prosecutions to advise the public of the Council's actions and to deter others.

10.0 Monitoring and Reviewing Enforcement Practice

- 10.1 This Policy is a transparent statement of what the Service intends to deliver and what customers can expect. The Policy will be kept under review and revised when necessary.
- 10.2 A monthly report will be presented to the Planning Portfolio Holder which provides details of;
- the workload of the team (incidence of complaints and referrals)
 - staffing levels and the pressures on the service
 - the number of outstanding cases
 - any enforcement appeals and their outcome
 - individual reporting of cases where further action is required or has been taken
 - any national legislative changes.

This reporting will allow prioritisation to be reviewed and the Policy updated if required

11.0 Customer Satisfaction

- 11.1 Please be aware that if you do not agree with a planning decision there is no third party right of appeal.
- 11.2 Making a complaint through the Council's complaint procedure will not alter the outcome of the planning decision.
- 11.3 The Local Government and Social Care Ombudsman (LGO) may consider your complaint, but this is usually only after you have exhausted the Council's complaint procedure.
- 11.4 The LGO provides an independent assessment of your complaint and if fault is found the Local Government and Social Care Ombudsman will advise on a suitable remedy, but please note the remedy will not affect the planning decision.

Appendix 1 – Glossary and Further Information

This is a summary of the various tools available to investigate complaints and deal with breaches of planning control. The local planning authority must assess, in each case, which tool or mix of tools is best suited to dealing with the particular breach of planning control to achieve a satisfactory, lasting and cost effective remedy. Any enforcement action should be commensurate with the breach of control to which it relates. The Council has a range of formal powers under the Town and Country Planning Act 1990 (the Act) that it can use to remedy breaches of planning control. The more common forms of enforcement action are:

Request for Information (RFI) - S330 of the Act – can be used to obtain information mainly relating to the ownership and occupation of the land.

S16 Local Government (Miscellaneous Provisions) Act 1976 – can be used to obtain very basic information about the ownership and other interests in the land.

Planning Contravention Notice (PCN) – Section 171(c) of the Act – this is the main method for local planning authorities to obtain information (possibly including a formal meeting) about suspected unauthorised development. It allows specific information to be requested related to breaches which may be taking place and those involved. It is an offence to fail to comply with the requirements of the notice within the period set for its return or to make false or misleading statements in reply.

Breach of Condition Notice (BCN) – S187(a) – used as an alternative to an enforcement notice where planning conditions have not been complied with. Although it can be quicker because there is no right of appeal, it is not appropriate in all cases.

S215 Notice – when the amenity of the area is adversely affected by the condition of the land or buildings this notice can require the land to be tidied. The recipient may challenge the notice in the Magistrate's court. Failure to comply with the notice is an offence. The Council may also use default powers.

Enforcement Notice – S172 of the Act - this is served when the authority is satisfied that there has been a breach of planning control and that it is expedient to take action. An enforcement notice requires remedial steps to be taken within a specified period. Failure to comply with a notice is a criminal offence.

Listed Building Enforcement Notice – this may be served if unauthorised works have been or are being carried out to a listed building. Similarly a **Conservation Area Enforcement Notice** may be served where development (including demolition) has been carried out without the necessary Conservation Area Consent.

Stop Notice - S183 of the Act – when the effects of unauthorised activity are seriously detrimental or causing irreparable harm and immediate action is justified, this notice may be served in addition to an Enforcement Notice. The effect is to require immediate or almost immediate compliance with the Enforcement Notice irrespective of whether an appeal is lodged. Due to the serious implications of these notices they are only served after a cost/benefit analysis has been carried out to determine that the action is proportionate to the harm caused.

Temporary Stop Notice – s 171(e) can require a breach to cease with immediate effect. It only lasts for 28 days and is intended to safeguard amenity for a temporary period either while negotiations are carried out, or while a more permanent method of control is put in place.

Injunction – the authority can apply to the County Court or High Court for an injunction in respect of an actual or apprehended breach of planning or listed building control, even when the identity of the person is unknown. An injunction can be sought whether or not other enforcement action(s) have been taken.

Default powers – the Council may enter land to take the necessary steps to secure compliance with an enforcement notice that has not been complied with. The costs of the work are charged to the landowner.

Unauthorised works to protected trees – It is a criminal offence to: - cut down, uproot or wilfully destroy a tree protected by a Tree Preservation Order or in a Conservation Area - wilfully damage, top or lop a tree protected by a Tree Preservation Order/in a Conservation Area in a way that is likely to destroy it. If any of these are carried out the Council will consider whether or not to prosecute.

Advertisements – it is an offence for any person to display an unauthorised advertisement. If the advertisement is not removed on request the Council will consider whether or not to prosecute. Control of works to Listed Buildings – it is an offence to demolish a listed building or carry out works/alterations which affect its special character without the authority's prior consent.

Conservation Areas - it is an offence to demolish unlisted buildings in Conservation Areas without a prior consent

Retrospective Planning Applications - A local planning authority can invite a retrospective application. In circumstances where the local planning authority consider that an application is the appropriate way forward to regularise the situation, the owner or occupier of the land should be invited to submit their application ([section 73A of the Town and Country Planning Act 1990](#)) without delay. It is important to note that:

- although a local planning authority may invite an application, it cannot be assumed that permission will be granted, and the local planning authority should take care not to fetter its discretion prior to the determination of any application for planning permission – such an application must be considered in the normal way;
- an enforcement notice may also be issued in relation to other elements of the development.

Further Information

[Enforcement and post-permission matters - GOV.UK \(www.gov.uk\)](#)

Appendix 2

Fourteen Day Observation Log

If your complaint involves a business operating from a residential property or other change of use, please complete this log for a 14-day period

Address					
Date	Time	Company name	Activity observed	Photo or video evidence?	Harm caused

Local Plan Committee - Background Information

What is a Local Plan?

A Local Plan is the strategy for the future development of a local area, drawn up by the Local Planning Authority (LPA) in consultation with the community. The Local Plan sets out the vision, objectives, spatial strategy and planning policies for the entire Colchester Borough. A Local Plan provides the overall framework for the borough in terms of employment and housing growth, infrastructure needs and identifying areas that require protection i.e., open space and community uses. The plan making process includes several rounds of public consultation with local communities, stakeholders and statutory consultees.

The Local Plan usually covers a 15-year period and identifies how communities will develop over the lifetime of the Plan.

In law, this is described as the Development Plan Documents adopted under the Planning and Compulsory Purchase Act 2004. A Local Plan must be prepared in accordance with national policy and guidance.

The National Planning Policy Framework (NPPF) states at paragraph 15 that *“The planning system should be genuinely plan-led. Succinct and up to date plans should provide a vision for the future of each area, a framework for addressing housing needs and other economic, social and environmental priorities; and a platform for local people to shape their surroundings”*.

Planning involves making decisions about the future of our cities, towns and countryside. This is vital to balance our desire to develop the areas where we live and work with ensuring the surrounding environment is not negatively affected for everyone. It includes considering the sustainable needs of future communities.

Independent Planning Inspectors must examine all Local Plans that local authorities in England prepare. This examination is the last stage of the process for producing a Local Plan. The process should have fully involved everyone who has an interest in the document, and they should have had the chance to comment.

Why is a Local Plan important?

A Local Plan is a statutory requirement as outlined in Section 19 of the Planning and Compulsory Purchase Act 2004.

The Local Plan contains policies to guide development by identifying a spatial strategy, site allocations for employment and housing development and protecting the environment, land and buildings for certain uses to ensure delivery of sustainable communities.

Without a Local Plan to identify where and how the borough should develop, planning applications are determined in accordance with national policy which does not provide

the local context of Colchester. Without a Local Plan, the borough would be at significant risk from speculative development. A Local Plan provides certainty of where development can be delivered sustainably across the Borough.

What is a Neighbourhood Plan?

The Localism Act 2012 devolved greater powers to neighbourhoods and gives local communities more control over housing and planning decisions.

A Neighbourhood Plan is a planning document that communities can put together to set out how they would like their town, parish or village to develop over the next 15 years. The Neighbourhood Plan is prepared by the local community for a designated neighbourhood area, usually this is undertaken by the Parish/Town Council or a Neighbourhood Plan Development Forum can be established for areas without a parish/town council.

A Neighbourhood Plan enables communities to identify where new homes and other developments can be built and enables them to have their say on what those new buildings should look like and what infrastructure should be provided. This provides local people the ability to plan for the types of development to meet their community's needs.

A Neighbourhood Plan must undergo a number of formal processes to ensure it is robust and well-evidenced. This includes two formal consultation periods, independent examination and a public referendum.

A Neighbourhood Plan is subject to examination where the Examiner must determine if the Neighbourhood Plan complies with the Basic Conditions as set out in the Town and Country Planning Act 1990 (as amended). Following an Examination, the Neighbourhood Plan must be subject to a referendum. In order for the Neighbourhood Plan to pass a referendum and be 'made' (adopted) the majority of voters (more than 50%) must be in favour of the Neighbourhood Plan.

If a Neighbourhood Plan passes the referendum, this becomes part of the Statutory Development Plan for that area. Where a Neighbourhood Plan has been 'made', both the Neighbourhood Plan and Local Plan are used when determining planning applications alongside national policy.

What is included in the Development Plan for Colchester?

The Development Plan is a suite of documents that set out the LPAs policies and proposals for the development and use of land and buildings in the authority's area. This includes Local Plans, Neighbourhood Plans and is defined in section 38 of the Planning and Compulsory Purchase Act 2004.

Within Colchester Borough this currently includes:

- Section 1 Local Plan (adopted February 2021);
- Section 2 Local Plan (adopted July 2022);
- Tiptree Jam Factory DPD (adopted 2013);
- Neighbourhood Plans.

Section 1 of the Colchester Local Plan sets out the overarching strategy for future growth across Braintree, Colchester and Tendring, including the Tendring Colchester Borders Garden Community as well as including policies setting the overall housing and employment requirements for North Essex up to 2033. Section 2 provides the policy framework, site allocations and development management policies for Colchester Borough up to 2033.

In Partnership with Tendring District Council, a Development Plan Document (DPD) is being prepared to further guide development on the Tendring Colchester Borders Garden Community. This process is being governed by the Tendring Colchester Borders Garden Community Joint Committee.

There has been considerable neighbourhood planning activity within Colchester with seven 'made' (adopted) Neighbourhood Plans across the borough. These are:

- Myland and Braiswick
- Boxted
- Wivenhoe
- West Bergholt
- Eight Ash Green
- Marks Tey and
- West Mersea

Four further Neighbourhood plans are at various stages of the plan making process. These include Copford with Easthorpe, Great Horkesley, Great Tey and Tiptree.

For minerals and waste matters, Essex County Council are the authority responsible for production of the Waste and Minerals Local Plans, which forms part of the Colchester Development Plan. At present the adopted plans for Essex are:

- Essex Minerals Local Plan (2014)
- Essex and Southend-on-Sea Waste Local Plan (2017)

What is included within the Development Framework for Colchester?

The Local Development Framework (LDF) is a non-statutory term used to describe a folder of documents, which includes all the local planning authority's local development documents. A Local Development Framework is comprised of:

1. Development Plan

Currently for Colchester this includes:

- Section 1 Local Plan (adopted February 2021)
- Section 2 Local Plan (adopted July 2022)
- Neighbourhood Plans (Myland and Braiswick, Boxted, Wivenhoe, West Bergholt, Eight Ash Green, Marks Tey and West Mersea)
- Essex Minerals Local Plan (2014)
- Essex and Southend-on-Sea Waste Local Plan (2017)

2. Supplementary Planning Documents (SPD)

An SPD is a document produced by the Local Planning Authority to add further detailed guidance and information on a particular subject such as Sustainable Construction or Open Space, Sports and Recreational Facilities. An SPD is subject to a formal consultation period and then is used as a material consideration when determining planning applications.

Currently for Colchester these are:

- Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) – August 2020
- Affordable Housing – August 2011
- Backland and Infill – December 2010
- Better Town Centre – December 2012
- Cycling Delivery Strategy – January 2012
- Provision of Community Facilities – July 2013
- Provision of Open Space, Sport and Recreational Facilities – July 2006, updated April 2019
- Shopfront Design Guide – June 2011
- Street Services Delivery Strategy – October 2012 revised February 2016
- Sustainable Design and Construction – June 2011
- Sustainable Drainage Systems Design Guide – April 2015
- Vehicle Parking Standards – September 2009
- ABRO Development Brief SPD (December 2021)
- Archaeology and Planning (2015)

A number of these will be reviewed and updated along with new SPDs to be compliment with new policies in the Adopted Local Plan.

3. Local Development Scheme (LDS)

The LDS is a project plan for a three-year period for the production of all documents that will comprise the Development Plan. It identifies each Local Development Plan Document and establishes a timescale for preparing each.

4. Authority Monitoring Report (AMR)

The AMR is a report published annually by the LPA, monitoring progress in delivering the Local Plan policies and allocations. The report covers the financial year from 1 April to 31 March and for Colchester is published in December.

5. Statement of Community Involvement (SCI)

The SCI sets out the standards that the Local Planning Authority (LPA) intend to achieve in relation to involving the community and all stakeholders in the preparation, alteration and continuing review of all Local Development Plan documents and in significant planning applications. The SCI also outlines how the LPA intends to achieve those standards. The SCI itself, is not a development plan document, but is subject to independent examination. A consultation statement showing how the LPA complies with its SCI should accompany all Local Development Plan documents.

What are housing targets and why do we have them?

The Government have committed to delivering 300,000 new homes per year across England to significantly boost the supply of homes.

A Local Plan identifies the minimum number of homes needed through policies which are informed by a local housing need assessment produced in accordance with the Standard Methodology as outlined in national planning guidance, unless exceptional circumstances justify an alternative approach. The Standard Method was introduced through the National Planning Policy Framework (NPPF) in 2019.

For Colchester, the minimum housing requirement has been established in the Section 1 Local Plan. Policy SP4 set out the minimum housing requirement figure for Colchester as 920 dwellings per annum and 18,400 new homes over the period 2013 to 2033. This number was based on the previous assessment method outlined in the NPPF 2012 known as the Objectively Assessed Need. The Local Plan has been examined in accordance with the transitional arrangements outlined in the NPPF 2019, which requires examination of the Plan under the NPPF 2012.

The Council are required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement figure as set out in the Local Plan, this is often referred to as the five year housing land supply (5YHLS).

The Council publish annually a Housing Land Supply Statement. This sets out Colchester's housing land supply position over a five-year period from 1 April of each year and explains how this position complies with the requirements of national policy and guidance. The Statement is prepared by the LPA with engagement from developers and agents regarding expected delivery of new homes.

What happens if the borough does not meet their housing target?

If an LPA cannot demonstrate a five-year supply of housing, national planning policy takes precedence over the Local Plan. The '*presumption in favour of sustainable development*' as outlined in national policy (NPPF paragraph 11d) will be triggered.

This means that if a planning application is considered to deliver sustainable development, then planning permission should be granted, even if the site is not identified for development in the Local Plan. In effect, the Council would have little control over where new homes are built and would be required to approve planning applications for sites that they may not have chosen for development. Many authorities can reject these schemes, but the decision can be overturned, and planning permission granted on appeal.