

13 December 2021

Report of	Assistant Director of Place and Client Services	Author	Sandra Scott ☎ 282975
Title	Colchester Local Plan Section 2 Modifications / Examination - Update		
Wards affected	All		

1. Executive Summary

- 1.1 Following virtual examination hearings in April 2021, the Planning Inspector has confirmed his recommended 'main modifications' for the Section 2 Local Plan.
- 1.2 The main modifications which are considered necessary by the Inspector for the Plan to be found sound, were subject to public consultation together with the accompanying Sustainability Appraisal and Habitats Regulation Assessment, which ran from 4th October to 1pm 18th November 2021. A short extension was added to the six week period to compensate for some disruption to the consultation portal.
- 1.3 The schedule of 'additional modifications' and modifications to the Policies Maps as consequential changes from the main modifications, to provide factual updates or to correct spelling/grammar errors were also subject to consultation at the same time.
- 1.4 All of the valid representations received are being passed to the Inspector for him to consider, to enable him to write his final report and subject to his recommendation the Plan can be adopted.

2. Recommended Decision

- 2.1 It is recommended that the Local Plan Committee:
 - Notes the information in the report summarising the response to consultation on the main modifications (attached as Appendix A).
 - Note the information in the report summarising responses to the consultation on the updates to the Sustainability Appraisal (SA) incorporating a Strategic Environmental Assessment (SEA) and a Habitats Regulations Assessment (HRA) for the Modified Section 2 Local Plan (attached as Appendix B).
 - Notes the information in the report summarising the response to consultation on the additional modifications and Policies Maps (attached as Appendix C).

3. Reason for Recommended Decision

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

4. Alternative Options

- 4.1 The Council cannot adopt the Local Plan contrary to the Inspectors findings. Therefore, the Council would need to consider an alternative approach to challenge the findings or withdraw the Section 2 Plan. It should be noted that the main modifications schedule currently received is not his formal recommendation nor a decision, it would not be itself challengeable by judicial review.
- 4.2 The alternative options available to the Council at this point would be:
- Withdraw the plan and start again.
 - Lobby the Secretary of State to direct that the Plan is submitted for him to consider.
- 4.3 Both options would involve further cost and delay to the Local Plan process and may leave the Council open to speculative development. There is no guarantee the second option would be successful.
- 4.4 Having considered the costs and benefits of these options, officers recommend that the Council continue with the Plan process and await the final report from the Inspector with a view to progressing to the Adoption of the Plan subject to him finding the Plan sound.

5. Background Information

- 5.1 Following the Examination Hearing sessions in April 2021, the Inspector recommended a schedule of recommended Modifications which he considers are necessary for the soundness of the Plan.
- 5.2 These Main Modifications were subject to consultation for a period of just over 6 weeks, as required by and in accordance with, the Planning and Compulsory Purchase Act 2004 and the Town and Country Planning (Local Planning) (England) Regulations 2012. An accompanying Sustainability Appraisal (update) and Habitats Regulations Assessment (update) were also subject to consultation over the same period. Alongside these the Council also prepared the consequential changes required to the Policies Maps to reflect the Main Modifications and any corrections necessary as well as a schedule of Additional Modifications which were very minor in nature / factual corrections. These were also subject to consultation.
- 5.3 The consultation was limited to the recommended Modifications to the Plan only. Any representations received to matters which are not subject to a recommended Modification are not considered to be valid, since the Inspector has already reached a view which suggests no amendment is necessary in order to address the soundness of the Plan.
- 5.4 Following the 6 week consultation, valid representations have been received as follows;
- 1192 Representations of Objection to the Main Modifications
 - 29 Representations of Support to the Main Modifications
 - 9 Representations in respect of the Sustainability Appraisal and 2 to the Habitats Regulations Assessment;
 - 8 representations to the Policies Maps
 - 10 representations to the Additional Modifications
- 5.5 A further breakdown of the representations received show that 91% were in relation to the Main Modifications linked to the Middlewick policy or supporting text. The Modifications proposed the wording of Policy SC2 and relevant supporting text be modified in a number of ways. This includes clarification of transport assessment and mitigation measures, biodiversity net gain requirements, and wording to ensure the evidence base and Masterplanning work adequately reflects the full range of environmental considerations, heritage assets, landscape considerations, contamination, developer contributions and timing /phasing in relation to biodiversity net gain, as well as the opportunity for effective engagement with the community through masterplanning for the site. The representations received cover a number of issues and concerns related to the loss of open space, traffic impacts, the loss of a Local Wildlife site, the implications for wildlife and habitats and the ability to achieve Biodiversity Net Gain. Many of the representations object to the principle of the allocation and request it is removed from the Plan or argue that it is not needed.
- 5.6 To highlight a few other issues receiving representations these include the modifications related to Tiptree, the changes in relation to Marks Tey following the Adoption of Section 1 and detailed wording on some environmental matters including Biodiversity and tree canopy cover. Many representations seek wording changes to add clarity or consistency with other policies such as those related to made neighbourhood Plans. The full summary is in Appendix A.

- 5.7 The representations range from suggested further refinement, alternative wording, a request to revert back to the former wording or objections in principle to the intention of the policy or the proposed modification
- 5.8 A number of Main Modifications did not attract any representations or only received Support. The policies which as Modified did not receive objections are listed below in Appendix A;
- 5.9 The Inspector is being passed all of the valid representations received to the Main Modifications and those to the Sustainability Appraisal and Habitats Regulations for him to consider further, prior to him issuing his Final Report or advising of any further matters for consideration.
- 5.10 The responses to the Policies Maps and Additional Modifications are for the Council to consider because of their minor nature. These are summarised in the schedule attached as Appendix C.
- 5.11 The consultation was publicised via the Council's website, through social media, by notification directly to all on the Local Plan database including Statutory Consultees (including Parish/ Town Councils) and through Ward Councillors. The level of response suggests a good level of awareness of the consultation.
- 5.12 As with all of the Local Plan Consultations respondents were encouraged to respond using the online Consultation Portal where possible. Alternatively people could respond via email, or by post to Rowan House. This consultation generated an unprecedented high proportion of responses being received via the portal with 74% of all representations received this way. 20% of representations were received by email and a minority of 6% by post. It is acknowledged that on the weekend of 13th/ 14th November there was some disruption to the online consultation portal. Although the software company attempted to resolve this during the weekend, the system was not fully functional again until Monday 15th just after 9am. For this reason and in the interests of fairness, an extension of time was agreed to compensate for the disruption and to ensure no one was disadvantaged. Receiving a high proportion of representations via the consultation portal has enabled them to be processed, published and sent to the Inspector expediently, so as not to cause any delay in his final reporting.

Next Steps

- 5.13 The next stage is for the Inspector to consider the representations received to the Main Modifications before he comes to a final decision on whether the Section 2 Local Plan with those modifications, is sound and can be formally adopted.
- 5.14 It is anticipated that the Inspector will consider the representations during December 2021 / January 2022 enabling him to issue his final Report January / February 2022. Subject to his final recommendations this will allow the Council to proceed to Adoption of the Section 2 Colchester Local Plan soon after.
- 5.15 As with Section 1, the decision to formally adopt the Section 2 Plan at the end of the process will be made by a meeting of the Full Council. This will result in the Colchester Local Plan as a whole being adopted.

6. Legal Implications

- 6.1 The planning legislation and the National Planning Policy Framework (NPPF) (both the 2012 version applicable to this Local Plan and the new 2021 version) place Local Plans at the heart of the planning system, so it is essential that they are in place and kept up to date. The NPPF expects Local Plans to set out a vision and a framework for the future development of the area, addressing the needs and opportunities in relation to housing, the economy, community facilities and infrastructure – as well as a basis for safeguarding the environment.
- 6.2 The NPPF states that where the development plan is out of date permission should be granted for sustainable development unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits or other policies indicate otherwise. It is therefore important to progress the Section 2 Local Plan through the remaining stages of the plan making process and ensure it meets the requirements of national planning policy so that, together with Section 1, it can become the new statutory development plan and be relied upon by the Council acting as the Local Planning Authority. It will replace the current Local Plan (comprising The Core Strategy, Site Allocations DPD and Development Management Policies and various site specific DPDs which will become increasingly out of date (these documents are available on the [CBC website](#)).
- 6.3 The Planning and Compulsory Purchase Act 2004 and the Town and Country Planning (Local Planning) (England) Regulations 2012 place certain provisions on the Local Planning Authority in complying with the plan making process, which are also tested at Examination. These include;
- a legal duty upon local authorities and other public bodies to engage constructively, actively and on an on-going basis to maximise the effectiveness of Local Plan preparation, this is known as the 'Duty to Cooperate' on strategic matters of cross-boundary significance, which includes housing supply;
 - provision for regulations relating to the preparation, publication and representations relating to a local plan and the independent examination;
 - requirement for a local planning authority to carry out a Sustainability Appraisal of each of the proposals in a Local Plan and the consequence of reasonable alternatives, during its preparation and in addition prepare a report of the findings of the Sustainability Appraisal;
 - requirement for a local planning authority to submit a plan for examination which it considers to be "sound" meaning that it is: positively prepared, justified and effective. The job of the Planning Inspector is to test that the Local Plan meets legal and procedural requirements and the above tests of soundness.
 - provides that the Inspectors must, if asked to do so by the local planning authority, recommend modifications to the local plan that would satisfy the requirements mentioned in subsection 20(5)(a) to make it sound
- 6.4 The job of the Planning Inspector is to test that the Local Plan meets legal and procedural requirements and the above tests of soundness. The Inspector has already confirmed that legal and procedural requirements have been met but that the Section 2 Local Plan will require modifications to ensure that it is sound. These modifications were published for consultation in their own right, alongside an updated Sustainability Appraisal and an update to the Habitat Regulations Assessment (HRA) which considers the impact of the

modifications on international wildlife sites. The Inspector must consider the representations to these before he prepares his final report and the Council can proceed to the adoption of Section 2

7 Equality, Diversity and Human Rights implications

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

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

8 Strategic Plan References

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

9 Consultation

- 9.1 The Council proceeded with the recommended modifications to the Section 2 Local Plan, along the lines indicated by the Planning Inspector, which were subject to a six week public consultation inviting any final comments for the Inspector to consider before he can come to a decision on the soundness of the plan. This consultation ran from 4th October to 1pm on 18th November 2021.
- 9.2 The consultation was confined to the recommended modifications. Comments have not been accepted on other elements of the plan not recommended for modification (and which are therefore presumed to be sound). The updated Sustainability Appraisal (SA) and Habitats Regulations Assessment (HRA) were also published alongside the modifications and comments on those documents were invited. The Council also published the schedule of Additional Modifications and consequential changes / corrections to the Policies Maps. All of the relevant documents were published on the Council's website and hard copies made available to view at the Colchester main library subject to their opening hours and arrangements in light of the coronavirus pandemic. Consultees and those on the Council's respective databases were notified and there was publicity via a number of media channels. The nature of the consultation exercise did not necessitate any public meetings, exhibitions or other face to face events.
- 9.3 Following the consultation, officers have processed all representations received and submitted them (alongside the documents subject to the consultation) to the Inspector's Programme Officer.

10 Publicity Considerations

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

11 Financial implications

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

12 Health, Wellbeing and Community Safety Implications

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

13 Health and Safety implications

- 13.1 No direct implications.

14 Risk Management Implications

- 14.1 Any consultation on the main modifications recommended by the Inspector may result in further objections; however, unless they raise fundamental issues which require re-examination, they are unlikely to result in further significant changes. This will be for the Inspector to judge and indicate in his reporting.
- 14.2 The Inspector has given clear advice on how the Section 2 Local Plan ought to be modified in order to meet the government's tests of soundness and for the Council to proceed to the next stage of the plan making process.

15 Environmental and Sustainability Implications

- 15.1 The Council has declared a Climate Emergency and has committed to being carbon neutral by 2030. The purpose of the planning system is to contribute to the achievement of sustainable development as defined in the National Planning Policy Framework. Achieving sustainable development means that the planning system has three overarching objectives, economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways through the plan making process. Accordingly, the preparation of the Section 2 of the Local Plan has taken these objectives as its starting point.
- 15.2 This report has taken into account the Climate Emergency and the sustainable development objectives set out in the NPPF. It is considered that the report demonstrates that adoption of Section 2 of the Local Plan can contribute to achieving sustainable development.

Appendices

Appendix A –Summary of representations received to Proposed Main Modifications

Appendix B – Summary of representations received to updates to the Sustainability Appraisal and the Habitats Regulations Assessment

Appendix C –Proposed Modifications to Policies Maps and Proposed Additional Modifications