

Local Plan Committee

Item

7

27th February 2020

Report of	Assistant Director of Place and Client Services	Author	Karen Syrett ☎ 506477
Title	Local Plan Update		
Wards affected	All		

1. Executive Summary

- 1.1 This report provides members with an update on the Local Plan examination and sets out possible outcomes, alternative proposals and the implications for other parts of the service.

2. Recommended Decision

- 2.1 The Committee is asked to proceed with the Local Plan as submitted to conclude the examination process.

3. Reason for Recommended Decision

- 3.1 Officers were instructed by Council to develop a contingency Plan B to the current proposals in Section 1 of the emerging Local Plan, for submission to the Local Plan Committee within one month of the completion of the Section 1 public hearing.

4. Alternative Options

- 4.1 Members could decide to proceed with a Plan B/alternative scenario.

5. Background Information

5.1 Last year Full Council passed the following motion;

'Officers are instructed to develop a contingency Plan B to the current proposals in Section 1 of the emerging Local Plan, for submission to the Local Plan Committee within one month of the completion of the Section 1 public hearing'.

5.2 At the same time Officers acknowledged that there would be a need to review Section 2 of the emerging Local Plan given the time that had elapsed since submission. There is some overlap with these tasks.

5.3 Background to the Local Plan

The three Local Planning Authorities (Colchester, Tendring and Braintree - sometimes referred to as the North Essex Authorities or the 'NEA's') are responsible for taking forward their respective Local Plans, but are currently jointly promoting the 'Section 1 Plan' which contains a number of strategic policies as well as the specific policies allocating the three proposed Garden Communities. The soundness of the Local Plans will ultimately be determined by an independent Inspector appointed by the Secretary of State.

5.4 The NEAs' shared strategic Section 1 Plan sets out the principles of development across North Essex including the Garden Communities as well as providing a planning framework to guide the preparation of future Development Plan Documents (DPDs) for those Communities. The plan is subject to an ongoing examination process which has resulted, following the initial concerns of the independent Inspector, in further evidence base work being prepared to support the case for the proposed Garden Communities. The latest hearing sessions have just closed, but the 'Examination' is still open until the Inspector concludes his work. The Inspector could decide to hold more hearings.

5.5 Progress Update

The NEAs have concluded the further Examination hearings on the additional evidence base documents including the Additional Sustainability Appraisal and suggested amendments related to Section 1 of their Local Plans. The hearings were held on 7 days during the period 14-30 January;

1. 14 January – Habitats Regulation Assessment, employment provision, and housing need;
2. 15 January – delivery mechanisms, state aid, build-out rates;
3. 16 January – transport infrastructure, Rapid Transit System, modal share strategy;
4. 21 January – viability seminar;
5. 22 January – viability, infrastructure costs and phasing;
6. 23 January – sustainability appraisal and spatial strategy;
7. 30 January – suggested amendments to the Section 1 Plan.

5.6 The Inspector indicated at the end of the hearings that he felt it was in everyone's interest to now conclude the examination process as soon as possible, given the length of time it has already taken. He intends to issue his initial findings in a few weeks. Accordingly, he does not intend to propose any general further work that would generate the need for significant further evidence and additional consultation. The Inspector has already written to examination participants advising on his views on whether further specific bits of evidence submitted during the examination will be accepted and given them an opportunity to respond in writing (by the 21st February). He will not entertain any other submissions.

He will then advise the NEA's of his initial proposed decision, which will be one of three possible outcomes:

1. Section 1 Plan as submitted is sound and legally compliant*
2. Section 1 Plan as submitted is unsound and/or legally non-compliant and inviting the Councils to withdraw the Plans. Inspectors cannot formally require withdrawal but if the Inspector remains unsatisfied with the Local Plan and evidence base after two examinations, and does not think that identified proposed modifications can address the concerns, it is unlikely that he would be satisfied by a further round of evidence preparation, consultation and examination.
3. Section 1 Plan can be made sound and legally compliant if main modifications are made to it. These main modifications would be subject to sustainability appraisal and to full public consultation before he made his final recommendations. It is possible that the proposed modifications could include the deletion of one or more of the garden communities.

* 1. Is technically possible, but now highly unlikely as policy modifications have already been agreed on some matters with statutory partners.

- 5.7 If the third option is recommended by the Inspector and the plan is found sound subject to main modifications, the NEA's would need to commission a sustainability appraisal update and carry out a six-week consultation on modifications before the Inspector considers any final representations and issues his final letter. At the same time the Inspector would indicate if any further evidence base work from the NEA's would be required on specific detailed issues only. If the Councils make the recommended modifications to their Plan, then each Council would then be able to proceed to Examination of the second section of their Plans which contain local policies and allocations prior to adoption of the overall Plan. The Councils have indicated that they would seek to adopt the Section 1 Plan ahead of their Section 2 Plans.
 - 5.7.1 If the Inspector accepts that all three garden communities can proceed (with modifications) then the Council would continue, as previously agreed, with the Local Plan as submitted and carry out the necessary additional consultation prior to a final letter being issued by the Inspector and adoption.
 - 5.7.2 It is possible that the main modifications recommend the deletion of one or more of the proposed garden communities. If one is proposed for deletion then the Council's response would depend on which community and the basis for the proposed deletion. It would also depend on the response of the other two authorities. The process adopted would depend on the nature of the proposed changes.
- 5.8 If the Inspector concludes that the Section 1 plan is or can be made sound then the Section 2 Plan can proceed to examination. It will need to be sound and legally compliant in its own right. This is why a review of the Section 2 plan and the evidence base supporting it is underway.
- 5.9 If the Inspector finds the Section 1 Plan unsound and invites the Council to withdraw the plans the Council would need to consider withdrawing both Section 1 and Section 2 and preparing a new Local Plan. Section 2 cannot proceed in isolation because the strategic policies are contained in Section 1.

5.10 An Alternative to Section 1

An alternative to Section 1 would in the view of your officers require the preparation of a new plan in its entirety. This would need to comply with the 2019 NPPF. It is likely to require a thorough review of evidence, a new sustainability appraisal and new allocations.

5.11 Officers are of the view that it will not be possible to develop a Plan B in relation to Section 1 in isolation for a number of reasons;

- Section 1 is a joint plan and requires the agreement of other local authorities
- Section 1 contains housing targets which are needed to inform section 2
- Section 1 contains employment targets which are needed to inform section 2
- Section 1 contains housing and employment allocations which contribute to the 15 year targets required for a new plan
- The sustainability appraisal was carried out on the basis of garden communities being included
- An alternative strategy without garden communities (or with a reduced number) would require changes to the vision and spatial strategy.

5.12 Review of Section 2

Officers have commenced work on a review of Section 2 to ensure it is still sound and legally compliant. This work has also helped inform the work to consider whether a Plan B for section 1 is possible.

5.13 This work has and will require the following;

- Undertake a pragmatic review of the evidence - has anything significant happened which renders it out of date and has implications on the Plan?
- In light of evidence review consider whether it can just be acknowledged that something has changed or if a focussed update of the evidence needs to be undertaken (by officers or consultants);
- Consider if there have been any other changes in circumstances which trigger the need to update evidence and/or modify the Plan e.g. planning permission having been granted;
- The plan as submitted will be examined against the 2012 National Planning Policy Framework (NPPF). However, officers will need to be pragmatic and consider where any fundamental differences in the revised NPPF (2019) have a bearing on the implementation of policy as drafted. Advice from Chelmsford CC was that generally the principles are unchanged and Policies should only be modified where there are any implications for implementing the policy, being careful not to change anything which has consequences on the evidence that has informed the plan, especially where it informs viability. The aim therefore is for any changes to be considered compliant with both versions of the NPPF. References to the NPPF should be generic and avoid paragraph numbers where possible.
- Sustainability appraisal - refresh to reflect factual corrections and seek confirmation from an independent consultant that it remains fit for purpose in the light of the Section One Inspector's comments on the SA
- Identify the minimal changes to the Plan required to reflect any evidence / other update where appropriate

5.14 Adopting this approach will enable officers to get to a position quite quickly in understanding what additional evidence updates are needed and extent of change to the plan.

5.15 A new Local Plan

If Section 1 is found unsound or one or more of the garden communities is proposed to be deleted the Council will need to consider it's options, as will TDC and BDC. If one authority chooses to withdraw it may make it difficult for any of the other Councils to proceed with their Section 1 Local Plan. It will then be necessary to consider if there is still an appetite to continue with all/any of the garden communities and if so, do all the authorities agree and can evidence be produced which supports this approach?

- 5.16 It would not be practical to promote a garden community to the East of Colchester without the support of TDC because of the limited land with the Colchester boundary. Failure to proceed with this proposal could result in losing the funding for the A120/A133 link road and rapid transit. This would also have implications for the completion of the segregated bus route in Mile End alongside the Via Urbis Romanae.
- 5.17 There is more land within Colchester to the west and in principle proposals could be progressed by Colchester working alone.
- 5.18 In the meantime it is important to point out that landowners and promoters can submit planning applications for development of land within the broad areas of the garden communities. In the case of both Tendring Colchester Borders Garden Community (TCBGC) and Colchester Braintree Borders Garden Community (CBBGC) this could be land on the edge of but outside Colchester Borough boundary. This would mean the applications would be determined by another planning authority – Colchester would only be a consultee.
- 5.19 If the Council decides not to progress the Garden Communities it can prepare it's own local plan based on development within its own boundaries, similar to previous local plans. Some of the evidence will remain fit for purpose but there will be significant changes required to a new plan, it will not be possible to simply 'tinker' with the current section 2. The new plan will be submitted under the 2019 NPPF which will also necessitate changes. The most significant changes and the implications are as follows;
1. Timescales – the plan will cover the period 2023 – 2038 (assuming adoption in 2023)
 2. Spatial Strategy and Vision– the change in approach would require changes to the spatial strategy and vision
 3. Housing – there will be a requirement to plan for approximately 1086 new homes per year, compared to the current 920 (an additional 1826 up to 2033 plus the additional 5 years in their entirety – 5430; resulting in a total of 7256). There will also be a need for some flexibility as we cannot assume every site will come forward. If the current plan is adopted the increase is delayed by 5 years until the next review. Officers are reviewing the current allocations and permissions but it is highly likely a new Call for Sites will be required if new allocations are necessary.
 4. The further away from a new adopted plan the greater the risk of not being able to defend the position that the Council has an up-to-date Local Plan which automatically triggers Paragraph 11 d of the NPPF in appeal decisions (the presumption in favour of development). It is hard to defend now and the longer it takes us to get a plan that is without question up to date the more difficult this will become.
 5. Changes in housing targets could impact on Neighbourhood Plans – for those allocating sites, the target is set in the Local Plan. If we are starting a new plan with higher strategic targets it would suggest Neighbourhood Plans such as Tiptree, which are still to go through examination, might have to take higher numbers. There may also be uncertainty in those areas which do have an adopted Neighbourhood

Plan, such as Wivenhoe, West Bergholt and Eight Ash Green, as additional sites would have to be found. This would undermine the confidence in the Neighbourhood Plan process.

6. Employment – land was allocated within the Garden Communities which would need to be reallocated elsewhere in the borough. Additional employment land may also need to be allocated to reflect the additional 4 years for the extended plan period
5. Infrastructure – development at scale can help provide infrastructure which benefits both existing and new residents – partly because of the land available. Land would need to be identified which could deliver new infrastructure such as schools and health facilities. Whilst financial contributions can be made towards infrastructure from smaller developments, it is often harder to allocate sufficient land. The Government's current consultation 'First Housing' would if implemented mean there is likely to be less money available for new infrastructure as it is diverted to providing new 'affordable' homes for sale.
6. A new sustainability appraisal would be required including Strategic Environmental Assessment .
7. A new Habitats Regulation Assessment would be necessary.
8. An Appropriate Assessment
9. Other new evidence base reports would be required covering matters including retail, flood risk, water cycle, affordable housing, development boundary review, etc.
8. Additional consultation would be required.

- 5.20 There are approximately 100 evidence base documents which support the current Local Plan. Much of this evidence is required to be undertaken by expert external consultees and therefore a competitive tender process would be entered into. The estimated cost of the additional work is between £250,000 - £400,000 depending on the exact scope of the work needed and the ability to save costs by working with partners.
- 5.21 If Garden Communities were excluded there is unlikely to be a need for a joint planning document. Assume therefore a single Local Plan examination at a cost of around £100,000.
- 5.22 A new spatial strategy would need to be formulated and tested through evidence including Sustainability Appraisal and highway modelling. Some of this work can take a lot of time to complete. Alternatives would need to be appraised and pros and cons considered carefully through the Local Plan Committee process.
- 5.23 The Plan period would need to be rolled forward to at least 2037 and therefore new housing, retail, employment and gypsy and traveller allocations would need to be sought to meet the additional identified needs. A further Call for Sites would therefore need to be undertaken to seek new potential sites. This would need to be supported by an updated Strategic Housing Land Availability Assessment
- 5.24 Detailed policies and smaller allocations which have not yet been built could be rolled forward into the new document subject to a review of their compliance with the revised NPPF which could be done in house.
- 5.25 There would be a need to undertake the minimum 2 rounds of consultation (instead of the more traditional 3) to provide the quickest possible route back to examination. However, this would need to be a member decision.

5.26 Timescales

Plan A – assumes Sections 1 is found sound:

- Section 1 –
 - Inspectors report expected – February/March 2020
 - Consultation on modifications/sustainability appraisal update – April – June 2020
 - Inspectors Final Report – August 2020
 - Adoption – Autumn/Winter 2020
- Section 2 –
 - Review evidence base – December 2019 – June 2020
 - Examination – November/December 2020
 - Inspectors Report – January 2021
 - Consultation on Modifications – February/March 2021
 - Inspectors Final report – May 2021
 - Adoption – June 2021

Plan B – new plan

- Evidence base review and updates, including sustainability appraisal – December 2019 – December 2020
- Rewrite Local Plan – September 2020 – March 2021
- Committee approval – April 2021
- Reg 18 consultation – May/June 2021
- Review responses, carry out additional studies if required and update the plan following consultation – July 2021 – December 2021
- Member approval – February 2022
- Reg 19 consultation – March/April 2022
- Submission – July 2022
- Examination – November 2022
- Inspectors report – February 2023
- Consultation on modifications – April 2023
- Inspectors final report – Spring/Summer 2023
- Adoption – Summer 2023.

If third parties seek to legally challenge any decision by the Council in relation to the Local Plan, it is normally done at adoption stage. This could apply to all scenario's.

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:- <http://www.colchester.gov.uk/article/4962/Strategic-Policy-and-Regeneration> or go to the Colchester Borough Council website www.colchester.gov.uk and follow the pathway from the homepage: Council and Democracy > Policies, Strategies and Performance > Equality and Diversity > Equality Impact Assessments > Strategic Policy and Regeneration and select Local Development Framework from the Strategic Planning and Research section.
- 6.2 There are no particular Human Rights implications.

7. Strategic Plan References

- 7.1 The Local Plan provides a delivery framework for a number of objectives contained within the Strategic Plan.

8. Consultation

- 8.1 There is no consultation proposed as a result of this report.

9. Publicity Considerations

- 9.1 The Local Plan continues to generate publicity for the Council.

10. Financial Implications

- 10.1 The financial implications will only be known when the outcome of the examination and the Council's preferred option is confirmed.

11. Health, Wellbeing and Community Safety Implications

- 11.1 There are no immediate implications. Implications would need to be assessed if the Section 1 Local Plan is proposed to be withdrawn or substantially amended.

12. Health and Safety Implications

- 12.1 There are no immediate implications. Implications would need to be assessed if the Section 1 Local Plan is proposed to be withdrawn or substantially amended

13. Risk Management Implications

- 13.1 There are no immediate implications. Implications would need to be assessed if the Section 1 Local Plan is proposed to be withdrawn or substantially amended

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 (NPPF). 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 The National Planning Policy Framework sets out the Government's planning policies for England and provides a framework within which locally-prepared plans for housing and other development can be produced. The underlying purpose of the planning system is to contribute to the achievement of sustainable development.