



Local Plan Committee

13 June 2022

Report of	Assistant Director of Place and Author Client Services	Sandra Scott ☎ 282975
Title	Colchester Local Plan Section 2 - Adoption	
Wards affected	All wards	

1. Executive Summary

- 1.1 Following virtual examination hearings in April 2021, and consultation on the Inspector's Main Modifications in October / November, the Planning Inspectors Jameson Bridgewater (and Anne Gordon), have issued their final report on the soundness and legal compliance of Colchester Local Section 2 Plan.
- 1.2 With the incorporation of the Inspector's final, slightly adjusted, set of recommended Main Modifications, the Colchester Local Plan Section 2 is sound and legally compliant. This allows the Council to adopt the Plan.

2. Recommended Decision

- 2.1 Local Plan Committee are asked to recommend the modified Colchester Local Plan Section 2, attached as Appendix C to this Report, and the accompanying Policies Maps (as appended to this Report as Appendix D) to Council for formal adoption.
- 2.2 To authorise the Lead Officer for Planning and Place Strategy to make minor corrections should any be required prior to publication of the final Plan and formal notification as required under the Planning Regulations.

3. Reason for Recommended Decision

- 3.1 To facilitate adoption of a Local Plan for the Borough in order to provide an up to date, 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 only alternative option is to withdraw the Section 2 Plan and start again.
- 4.2 The alternative of not proceeding with the Adoption of a new Local Plan would leave the Council in a vulnerable position going forward with no clear steer for the future growth and development of the Borough. It would result in existing policy becoming outdated and not in accordance with national policy requirements. The Council may not be able to demonstrate a 5-year supply of housing land and could be subject to more speculative planning applications and the presumption in favour of development.
- 4.3 Local Planning Authorities (LPAs) are required to have an up-to-date local plan in place by the end of 2023 or face government sanction/intervention. Officers do not believe it would be possible to meet this deadline if Section 2 was withdrawn and the process started afresh.

5. Background Information

- 5.1 The Local Plan for Colchester Borough was submitted to the Government in October 2017. The Plan is in two parts with Section 1 of the submitted Local Plan ('the Section 1 Plan'), being adopted in February 2021. This sets out an overarching strategy for future growth across Braintree, Colchester and Tendring – the 'North Essex Authorities' ('NEAs'). It also includes policies setting the overall housing and employment requirements for North Essex up to 2033.
- 5.2 The Colchester Local Plan Section 2 contains all other Boroughwide site allocations and policies including a comprehensive policy framework for Development Management. It provides detailed guidance for how allocated sites may be developed and specific considerations and infrastructure requirements which apply to particular sites.
- 5.3 Before a Local Plan can be formally adopted by a Council, it must be examined by a government-appointed Inspector whose job it is to check that 1) the plan has been prepared in line with various legal requirements and 2) that the policies and proposals in the plan comply with the 'tests of soundness' contained within the National Planning Policy Framework (NPPF).
- 5.4 Two Government Inspectors were appointed to consider the Colchester Local Plan Section 2 - Jameson Bridgewater PGDip TP MRTPI and Anne Gordon BA(Hons) MRTPI, with the former taking the lead for Colchester. Following the Examination Hearing sessions in April 2021, the Inspectors recommended a schedule of Main Modifications which were considered necessary for the soundness of the Plan.
- 5.5 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.
- 5.6 Having considered the comments received on the Main Modifications, the Inspectors have issued their Final report to the Council which contains the final conclusions on the legal compliance and soundness of the Colchester Local Plan Section 2. The Inspectors have concluded that, subject to the incorporation of the final set of Main Modifications (Appendix B), the Colchester Local Plan Section 2

will meet the required tests which enable it to proceed to formal adoption. The Inspector's report is attached in full as Appendix A to this report.

5.7 The final Main Modifications are mostly unchanged from those published for consultation with just a small number of changes that respond to specific comments received during the consultation. These include amendments to reflect clarity and consistency in respect of the following;

- MM18 - Paragraph 13.9 (Hedgerows) correction for accuracy and to reflect the position agreed in the Statement of Common Ground with Essex County Council (SCG2)
- MM66 - Policy SS12b Coast Road West Mersea has been amended to replace "or" with "and where appropriate" in criterion (iii) of the Policy which relates to the Recreational Avoidance and Mitigation Strategy (RAMS). This will ensure the policy is effective and reflect the comments from Natural England.
- MM69 – Tiptree - Paragraph 14.221 an alteration the advertised modifications by adding 'a minimum of' before 400 dwellings in the explanatory text to ensure consistency within the policy
- MM71 - Policy SS14 -Tiptree, further amendment replacing the requirement for a "detailed transport assessment" with "strategic transport appraisal" which is more proportionate and flexible. This is consistent with comments received from Essex County Council as the Highway Authority
- MM73 - Policy SS16- Wivenhoe, altered the modification to assist with clarity in relation to the Neighbourhood Plan area deleting the reference to the parish.
- MM81 Paragraph 15.32, amending the paragraph for clarity reflecting comments from Natural England regarding development in close proximity to habitat sites.

5.8 The responses to the Policies Maps and Additional Modifications are for the Council to consider because of their minor nature. Limited further minor amendments to have been made to reflect accuracy and clarity. In respect of the Policies Maps a number of corrections or updates have been made including;

- Policy Map WC1-5 West Colchester-

- For clarity a different shading is used to distinguish the Tollgate District Centre from other District Centres across the Borough.
- The retail frontage within the Tollgate District Centre is no longer relevant. The Policy Map will be updated accordingly.
- Policy Map SS9 Langham- The Policy Map is updated to correctly show the Lodge Lane employment designation.
- Policy Map SS11- Marks Tey - The Policy Map is updated to correctly show the employment designation at Timbers Yard.
- Policy Map SS16 Wivenhoe – The Policy Map is updated to include the conservation area designation
- Policy Maps, for North Colchester (NC1 and NC2-4) Boxted (SS2), Eight Ash Green (SS5), Marks Tey (SS11), Mersea Island (SS12a, 12b and 12c), West Bergholt (SS15) and Wivenhoe (SS16) have had a note added to state that a Neighbourhood Plan has been made.
- Policy Map Dedham and Dedham Heath- amended title to include Policy OV1 and SG1

5.9 A revised Introduction has been drafted to reflect the separate Adoption of Sections 1 and 2 of the Colchester Local Plan and amend any consequential updates as a result of this. In addition, it incorporates a short tribute to two individuals who have contributed and supported the Council in the preparation of the Plan but who sadly passed away during the examination. It is hoped that Members will support the inclusion of the following;

Tributes

This Local Plan like all others has benefitted from a significant number of contributors over a number of years. There are 2 individuals who sadly passed away during 2021, who both had a significant influence on shaping and informing the content or process, which has enriched the final Plan;

- *Stephen Ashworth- (1963 – 2021) Planning Law Partner at Dentons). Stephen worked with the Council and other partners for many years to support and guide the Plan preparation for both Sections of the Local Plan. Stephen's intellect, passion, dedication and pragmatic, solution focused approach to planning provided a steer throughout the process. Without a doubt, the Plan is better for all his contributions.*

- *Alistair Day – ((1970- 2021)– Principal Planning & Specialists Manager). Alistair worked tirelessly as an Officer at Colchester Borough Council for over 20 years and it is without doubt a better place for his involvement. Alistair quietly influenced the plan making team with understated contributions to many of the policies, which will ensure his legacy continues to live on for many years to come, well beyond the Plan period.*

5.10 A clean copy of the Colchester Local Plan Section 2, and accompanying Policies Maps are attached to this report as Appendix C and D respectively. These incorporate all of the final Main Modifications, attached as Appendix B as well as the final additional minor modifications. The Policies Maps (appendix D) incorporate all updated constraints layers, modifications and any further corrections

5.11 The importance of ensuring the Council has an up to date Adopted Local Plan cannot be understated. The existing Core Strategy, Site Allocations and Development Management Policies will become increasingly out of date. The current National Planning Policy Framework under paragraph 11 d) states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless;

- i. *“the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
- ii. *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”*

5.12 In these circumstances the ability to control and influence matters which are rightly covered in the Local Plan is significantly reduced, with more reliance being placed on national policies contained within the NPPF. The Colchester Local Plan Section 2 (CLP2) is based on significant evidence reflecting circumstances and issues relevant to Colchester, which add valuable guidance and detailed requirements which would apply to decision making. An up-to-date Local Plan enables decisions to be considered against the most relevant Local Policy framework, with an expectation that decisions would be required to comply with the policies in the Development Plan as a whole. Whilst seeking to support and achieve sustainable development, the ability for the Council to shape and influence planning decisions is significantly enhanced with an up-to-date Local Plan.

- 5.13 The recent Levelling Up Bill, which was given its first reading on 11 May 2022, along with other steps proposed by the Government (summarised in the Report at item 10) will place even greater importance on Councils having an up-to-date Local Plan. The Bill makes several changes to strengthen the role of democratically produced plans, so that decisions on applications are more genuinely plan-led. It specifically states that “*Local plans will be given more weight when making decisions on applications, so that there must be strong reasons to override the plan.*” To incentivise plan production further and ensure that newly produced plans are not undermined, the Government’s intention is to remove the requirement for authorities to maintain a rolling five-year supply of deliverable land for housing, where their plan is up to date, i.e., adopted within the past five years. This is intended to curb perceived ‘speculative development’ and ‘planning by appeal’, so long as plans are kept up to date. These proposed changes and the enhanced emphasis on decisions being in accordance with up-to-date plans is significant and in particular in respect of the implications for authorities where an up to Local Plan is **not** in place.

Next Steps

- 5.14 Now that the Council has received a final report on the legal compliance and soundness of the Section 2 Local Plan, Officers recommend that the Local Plan Committee endorse the Inspector’s final Main Modifications, and that the modified version of the plan (updated clean version attached as Appendix 3 to this report) be forwarded to Council and recommended for formal adoption. This will result in the Colchester Local Plan being adopted in its entirety.

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. Failure to have an up to date and adopted Local Plan by 2023 could place the Council at risk of Government intervention.

- 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 proceed with the adoption

of the Section 2 Local Plan to ensure it meets the requirements of national planning policy so that, together with Section 1, it can become the new Boroughwide 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 Inspectors have 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. With the incorporation of the final Main Modifications

the Plan has been found sound and the Council can proceed to the adoption of Colchester Local Plan - 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 has been through a comprehensive consultation programme for the Local Plan as set out in the Council's Statement of Community Involvement (SCI) and as required under the Planning and Compulsory Purchase Act 2004 (as amended)

10 Publicity Considerations

- 10.1 All documents are available on the examination website hosted by the Council. The Inspectors Report and final Main Modifications were published on the website following receipt of the Report. 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.
- 11.2 Failure to adopt the Local Plan would have significant financial implications as the process would need to restart. Other local authorities have estimated that this will cost over £0.5m to cover a new evidence base, consultation and examination on top of £0.85m spent to date.

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 Local Plan policies are intended to ensure their effectiveness is intended to reduce the risk of inappropriate development. It will provide consistent advice to landowners, developers, officers, Councillors and members of the public

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 – Final Inspectors’ Report

Appendix B – Final Main Modifications (Appendix to Inspectors’ Report)

Appendix C – Colchester Local Plan Section 2 (Final Draft version)

Appendix D- Colchester Local Plan Section 2 Policies Maps (Final Draft Version)