

Report of	Assistant Director: Policy and Corporate	Author	Karen Syrett ☎ 506477
Title	Local Plan Examination Options		
Wards affected	All		

1. Executive Summary

- 1.1 The Inspector for the strategic Section 1 of the Local Plan prepared jointly with Braintree and Tendring wrote to the local authorities on 8th June 2018 raising issues requiring further work and proposing a number of options for progressing the Local Plan.
- 1.2 The options are as follows:
 - 1.2.1 Option 1 – Removal of the Garden Communities from the Plan, continue to examination and adoption of the rest of the section 1 and section 2 Plan before considering the potential reintroduction of the Garden Communities under an early or focussed review of the Plan in 2-3 years' time.
 - 1.2.2 Option 2 – Continuation of Local Plan and examination following completion of further evidence base and sustainability appraisal work
 - 1.2.3 Option 3 – Withdrawal of the current draft Section 1 and Section 2 and submission of an entirely new Local Plan
 - 1.2.4 Alternative Option – any alternative course of action.
- 1.3 The Inspector has subsequently written two further letters which confirm the housing requirements (Objectively Assessed Need) and provide further detail about his interpretation of Option 1.
- 1.4 The Committee are being asked to consider the Options, the implications of each and agree a way forward.

2. Decision Required

- 2.1 The Committee is requested to agree how to proceed with the Local Plan.

3. Reason for Decision

- 3.1 The Council is required to agree how to take forward the draft Local Plan. The Local Plan is a statutory document and failure to produce one could result in government intervention.
- 3.2 The Draft Local Plan includes a common Section 1 prepared jointly with Tendring and Braintree District Councils. Subject to the agreement of this Council, Braintree and Tendring councils have already taken the decision to proceed with Option 2. If the three Councils cannot agree an approach to Section 1 the proposed Local Plans (both Section 1 and Section 2) will need to be withdrawn. A decision is required to enable all three local authorities to proceed with their respective local plans.

4. Alternative Options

- 4.1 The Inspector has set out three main options which could be pursued and also invited the Councils to put forward any alternative course of action they considered appropriate.

5. Background Information

- 5.1 The Council submitted its Local Plan for examination to the Planning Inspectorate on the 9th October 2017. The plan comprises Section 1 (written together with Braintree and Tendring District Councils) which includes 10 policies dealing with cross border strategic issues and Section 2 which contains Colchester specific allocations and policies.
- 5.2 The Planning Inspectorate appointed Roger Clews to examine the plan and he held sessions in January this year, with a further session held in early May. Following his examination, the Council has now received three detailed letters from the Inspector commenting on aspects of the plan. The letters have been added to the examination website hosted by Braintree DC. The Local Plan Committee previously scheduled for 13th August was postponed until the current date to allow the Council to give members more time to consider the implications of the Inspector's third letter clarifying his interpretation of the options, to allow the council time to obtain further advice and then to reconvene the Committee to consider the matter.
- 5.3 The Inspectors second letter of 27 June 2018 considered housing requirement aspects of the plan and provided the Inspector's view that the Policy SP3 housing requirements were soundly based. This confirms our target of 920 dwellings per year.
- 5.4 The letter of 8 June 2018 contained the Inspector's interim findings in respect of the Section 1 Local Plan including legal compliance, employment requirements and Garden Communities. The key findings are summarised below;
- 5.5 Legal compliance

The Inspector has found that the authorities have complied with the legal duty to cooperate, both in cooperating with one another and also wider adjoining authorities and other bodies. The Inspector also found that while there had been a failure to properly register a small number of representations the steps put in place to ensure that Lightwood Strategic and others were able to participate in the hearings meant they were not substantially prejudiced in any way.

- 5.6 The Inspector found that whilst the authorities had complied with the European Habitats Regulations in the preparation of the plan, the Habitats Regulation Assessment would need to be updated to ensure compatibility with a recent judgement from the Court of Justice of the European Union. This is a matter that Officers consider to be easily resolved through further work.

- 5.7 The Inspector concluded that the authorities undertook proper consultation in accordance with the planning regulations and their individual Statements of Community Involvement (SCI).

5.8 Garden Communities

The Inspector praised the authorities for their innovation and ambition in promoting three new Garden Communities in North Essex and stated that “if carried out successfully it has the potential to provide for housing and employment needs not just in the current Plan period but well beyond it.” However, the Inspector found the evidence and appraisal work provided to support the Garden Communities was lacking in a number of respects. The main areas of concern are as follows:

- 5.9 **Transport:** The Inspector raised concerns about the certainty of funding for the A120 and for the routing of the A12 as it travels north eastwards from Feering around Marks Tey. The Inspector also identified the need for further work on the rapid transit system to serve the Garden Communities and wider area. The Inspector notes that since this would need to be accompanied alongside a step change in public transit further evidence was required on how this can be achieved, when it will be delivered and how it will be funded.
- 5.10 **Viability:** The Inspector noted the need to include various contingencies and sensitivity modelling for the garden communities so that he can be assured that they are a long term viable and deliverable project.
- 5.11 **Sustainability Appraisal of the Local Plan (SA):** The Inspector has asked for a consideration of whether there are other scenarios for growth that are reasonable to be considered within the Sustainability Appraisal (required to assess the spatial strategy and policies in the Local Plan along with reasonable alternatives). This would include looking at the scoring of those options. To carry out this exercise, the Inspector suggested that it would be better to appoint new consultants.
- 5.12 **Housing Delivery:** The Local Plan currently relies on Garden Communities to deliver a considerable number of new homes within the period up to 2033. This assumes that high annual rates of development would need to be achieved

ranging from 250 to 350 homes a year in each location from 2023. The Inspector has raised concerns that whilst it might not be impossible to achieve such high rates of delivery, an annual average of 250 homes a year might be more realistic.

- 5.13 **Employment Provision:** The Inspector notes the authorities' desire to create one new job per household within each Garden Community or within a short distance by public transport. However, because the plan contains no specific figures for employment land and floorspace in each Garden Community, the Inspector is unable to confirm whether or not this aspiration is achievable.
- 5.14 The Councils have been given a clear steer from the Inspector on the additional evidence required to achieve a sound plan and have initiated further work to consider whether or not it is possible to update the evidence base and appraisal work to address the identified issues. The initial conclusion is that the evidence base can be updated, and further appraisal work carried out within an acceptable timeframe. Clearly, the further sustainability appraisal work may lead to a different conclusion(s) and that will need to be kept under continuing review. It is important to note that completion of the work will be required irrespective of choices made on options given that it involves addressing issues that require clarification under any scenario. Action on the highways point will follow on from partnership work with Essex County Council, Highways England and the Department for Transport who are the key delivery agents for these elements of national infrastructure funding programmes. Further evidence base work will follow on rapid transport and viability. Land Use Consultants (LUC) have been commissioned to carry out additional SA work given that the Councils' initial assumption was that this would be required for all options. This has subsequently been confirmed by Counsel. As part of the process for undertaking this work there will be engagement with local groups and statutory bodies as well as a formal period of consultation on the completed piece of work. The SA work could result in changes to the Local Plan and therefore would also need to be considered by the Committee.
- 5.15 Carrying out further evidence base work of course has implications for the existing timetable contained in the Local Development Scheme, which will require revision and approval by the Committee at a subsequent meeting.
- 5.16 The Inspector's 8 June letter, in paragraph 148, sets out "the options available to the NEAs, as I see them, on the assumption that Section 1 cannot be adopted in advance of Section 2... Essentially it seems to me that they have three main options". The NEA's have sought advice from leading Counsel on this matter and the conclusion is different to the Inspector's assumption in that it would be a lawful approach for the NEA to adopt Section 1 separately from, and ahead of, Section 2.
- 5.17 The Inspector provides further detail on the three main options at paragraphs 149-156;

Option 1 would be for the NEAs to agree to remove the GC proposals from the Section 1 Plan at this stage, and commit to submitting a partial revision of Section 1 for examination by a defined time, for example within two or three years. This would involve drawing up main modifications to remove the current GC proposals and address the other soundness issues identified above. The NEAs would also need to amend their Local Development Schemes [LDS] to include the proposed partial revision to Section 1.

These steps should enable the Section 2 examinations to proceed, and subject to the findings of those examinations and to consultation on the main modifications to Section 1 and (potentially) to Section 2, each Local Plan should then be able to proceed to adoption. In preparing for the Section 2 examinations the NEAs would, of course, need to consider any implications of the removal of the current GC proposals – and any implications of my forthcoming findings on policy SP3 – for housing land supply in each NEA in the years before the partial revision comes forward.

Following the Section 2 examinations, under Option 1 the NEAs would then carry out further work on the evidence base and Sustainability Appraisal, as outlined in my comments above on the GC proposals. That further work would provide the basis for revised strategic proposals to be brought forward for examination as a partial revision to the Section 1 Plan, within the timescale identified in the revised LDS. The revised strategic proposals could in principle include one or more GC(s), if justified by the further evidence and SA work.

Option 2 would involve the NEAs carrying out the necessary further work on the evidence base and Sustainability Appraisal, and bringing forward any resulting revised strategic proposals, before the commencement of the Section 2 examinations. Due to the considerable length of time this is likely to take, it would be necessary to suspend the examination of Section 1 while the work is carried out and consultation on the SA and any revised strategic proposals takes place. Following the suspension, further Section 1 hearings would need to be held to consider the revised strategic proposals.

It seems to me that in this option the Section 2 examinations could not sensibly proceed before the additional Section 1 hearings had taken place and the Inspector's initial views on the revised proposals were known, as any significant revisions to Section 1 would have consequences for the examination of Section 2.

It is also possible under Option 2 that other parts of the evidence base for both Section 1 and Section 2 might become out of date or overtaken by changes in national policy. Should this occur, there would be a risk of additional delay to the examination of both parts of the Plan while the relevant evidence is updated and any necessary modifications are brought forward.

All this means that even in the most favourable circumstances the adoption of the NEAs' Local Plans would be substantially delayed under Option 2,

compared with Option 1. In turn this could give rise to continuity problems for all participants in the examinations of the plans.

***Option 3** would be to withdraw the Section 1 and Section 2 Plans from examination and to resubmit them with any necessary revisions, after carrying out the required further work on the evidence base and SA, and the relevant consultation and other procedures required by legislation.*

***Alternative Option** would be for the North Essex Authorities to propose an alternative course of action not explicitly detailed by the Inspector in his letter. The Inspector invites this at paragraph 158 of his letter.*

- 5.18 Having sought legal advice, the Council, together with Braintree and Tendring, were of the view that Option 1, as presented in the letter of 8 June letter, did not fully set out the practicalities and implications of choosing this option. As a result, the Councils wrote to the Inspector on 20 July 2018 seeking further clarification of the implications of Option 1. The Councils did not seek further clarification in respect of Options 2 or 3 on the basis that the implications of these options were clear. The third letter of 2 August 2018 is the Inspector's reply to that letter. The questions asked by the Council, the Inspector's response to each and a legal opinion (where appropriate) is detailed below;

Sustainability Appraisal (SA)

Will the removal of the garden community proposals from Section 1 require a new SA? The letter notes the Councils' view that Option 1 would necessitate a further SA given the scale of the main modification to remove the garden communities and garden communities would need to be considered as a realistic alternative in any S.A.

Summary of Inspector's reply of 2 August

The extent of SA work required is for the NEA (North Essex Authorities) to decide. The need for an updated SA for Section 1 modifications will depend on whether or not the proposed main modifications to Section 1 would have any effects that have not already been assessed in the SA work carried out to date. It is not agreed that SA of the proposed main modifications would have to assess the current garden community proposals as a reasonable alternative. The appropriate time for SA of any garden community or other strategic-scale development proposals would be if and when they are brought forward as part of the plan revision, supported by further work on the evidence base (paras 24, 25, 33, 34 and 35).

Legal Advice

Counsel advised that the SA would have to be updated to support a revised Section 1 under Option 1. That SA would have to reflect the omission of the homes and employment proposed in the Garden Communities, and would have to address the shortfall that that would leave compared with the OAN homes. The SA would be able to take account of the commitment to review Section 1

but would have to reflect the fact that the future Section 1 review might not support Garden Communities, either in their present form or at all.

Counsel further advised that any Section 1 SA would have to treat the Garden Community options as a "reasonable alternative" for SA purposes.

Counsel also advised that the Section 2 SA's would all have to be reviewed to reflect the absence of the Garden Communities and the potential consequences of the uncertainty about the potential outcome of the Section 1 review.

Examination

Will further examination days be needed to deal with objections from Garden Community promoters if they make material objections to the deletion of the relevant policies? The letter notes that Councils assume that there would need to be a further hearing into those objections before a conclusion on soundness could be reached.

Summary of Inspector's reply of 2 August

Further hearings to discuss the main modifications would only be necessary if substantial issues, not already considered during the Section 1 examination, arose from the consultation responses (paras 23 and 35).

Legal advice

Counsel noted that examinations are re-opened only exceptionally to deal with proposed modifications.

Counsel advised that his view was that the omission of the Garden Communities would clearly be exceptional. If the examination was not re-opened he would expect a judicial review of that decision with consequential delays to the conclusion of the local plan process.

Review of Section 1

Do the implications that have to be considered include the possibility that the Garden Communities proposals will not be promoted in a revised future Section 1? The letter notes the Councils' view that the implications would need to be considered.

Summary of Inspector's reply of 2 August

Not in the context of the current Section 2 examinations. They might need to be considered when the partial revision to Section 1 is brought forward, depending on what is proposed in it (para 36).

Implications for Section 2

Will the Section 2 plans need review to consider whether they still represent the most appropriate strategy and include replacement housing sites for the deleted Garden Community numbers? Will consideration of Section 2 need to wait to

proceed until issues of soundness relating to Section 1 are addressed? The letter notes the Councils' view that additional sites would need to be assessed and modification and re-consultation on the Section 2's may be required before progressing to the examinations.

Summary of Inspector's reply of 2 August

The current Section 2 examinations would need to establish whether the Section 2 plans represent the most appropriate strategy to deliver each NEA's housing requirement, minus the 7,500 dwellings that the current garden community proposals are intended to deliver. The strategy to deliver those 7,500 dwellings would be a matter for the partial revision to Section 1 (and a subsequent Section 2 if necessary) (para 37).

Legal Advice

Counsel advised that it would be for the Section 2 examiners to consider whether the Section 2 plans were sound.

If the OAN is not being met each examiner would have to consider whether the commitment to a review in Section 1 was sufficient for them to find the plan sound. This would be a decision to be taken on each Section 2 plan and would depend on factors such as the extent of any shortfall and the consequences of the Garden Communities not being the chosen option in any Section 1 review.

- 5.19 The Council's letter is attached in full as Appendix 1 and the Inspector's replies to the questions is attached as Appendix 4. To provide further clarity on the Councils' legal position, the Councils' legal advisors, Dentons, commissioned additional advice from Christopher Lockhart Mummery QC on the points raised in the letters on options. The summary of his advice is attached as Appendix 5.
- 5.20 Colchester, Braintree and Tendring officers have considered the options carefully, along with legal advice contained in Appendices 2 and 5 to this report, and have previously recommended that the Councils support Option 2. Option 3 has been discounted as it would entail abandoning all the valuable work completed to date on the Local Plan. It would also result in substantial delay before an up to date plan was in place. Without an adopted plan the Council would be at a prolonged risk of speculative development.
- 5.21 A detailed analysis of the pros and cons of Options 1, 2 and 3 is attached as Appendix 3. This incorporates consideration of relevant points raised in all of the Inspector's three letters. It will be clear from the exchange that the Inspector and the officers and independent advisors (including Counsel) advising the Council differ in their views about the implications of adopting Option 1. Officers think that consultation/examination requirements, and the timescales, for Option 1 and Option 2 are broadly comparable. The Inspector considers that Option 1 would require less work and would be quicker. Removal of the Garden Communities element of the plan would result in a fundamental change to the plan that would need to be reflected by revision of Section 1 to both remove those specific policies and make consequential changes; further

Sustainability Appraisal work; consultation on the amended plan and SA; and potentially re-opening of the examination to consider representations from those that object to the removal of the garden communities.

- 5.22 A key consequential change arising from removal of the Garden Communities would be a significant shortfall in the supply of housing sites to meet the needs up to 2033. Although the Inspector does not believe it to be necessary, the Councils would need to consider whether the present allocations and patterns of development in Section 2 remain appropriate if the garden communities are not coming forward as proposed and assess additional sites for meeting the housing needs at the latter end of the plan period.
- 5.23 The Council's legal advice from Dentons (appendix 1) identifies that pursuing Option 1 would involve two problematic choices – proceeding with a plan for the full fifteen years that does not meet objectively assessed housing need, albeit with a commitment to review, or alternatively, propose a plan for a shorter period. As far as the first choice goes, it's noted that 'the NEAs could not, in good conscience, promote a Local Plan which has, before the examination commences, a known under-provision'.
- 5.24 Para 4.6 of the opinion evaluates the second choice as follows:
- 'The only way that we can see to avoid the need to assess additional sites is to shorten the plan period to the extent that the shortfall is not felt within the plan period. The new period would end at the point when the partial review is likely to be completed, perhaps in [2026/7]. This would mean a plan period of, say, 5 years post a 2022 adoption. That falls significantly short of the 15 year-time horizon required by paragraph 157 of the NPPF. We do not see how a plan for such a short period could be found sound.'
- 5.25 A shorter plan period and earlier review would also have implications for the Objectively Assessed Housing need figure. The current plan was submitted prior to the introduction of the new methodology introduced for calculating housing need so it has relied on the existing figure of 920 houses a year. The Inspector's letter of 27 June has confirmed that the Councils' approach is soundly based. A new review would, however, need to use the higher figure of 1095, resulting from the new methodology, as its starting point and allocate sites accordingly. If the review also needed to find alternative sites for the 2500 Garden Communities units, the plan could involve a total of 5,500 additional houses over a fifteen year period. This risk should not be overstated. Whichever Option is pursued there will be a requirement for a Local Plan review within 5 years of adoption, at which point the higher OAN numbers will need to be considered. Option 1 simply brings forward that date to the date of the proposed partial review.
- 5.26 Bearing in mind the deficiencies identified with Option 1, Option 2 has been supported by officers on the basis that, it provides a clear and agreed strategy for long term housing growth by the middle of next year, with the Section 2 plans following on to adoption in 2020. Although the Local Plan is delayed by 9/12

months it still allows the garden communities to start delivering houses in 2023/24, and make a contribution of up to 7,500 homes in the plan period. Clearly, this Option relies on the evidence base and SA work being carried out properly and satisfying the Inspector after a further open examination.'

5.27 A key factor weighing in favour of Option 2 is that it is consistent with the Council's earlier decision that Garden Communities are the best long term high quality sustainable strategy for growth in North Essex, properly supported by infrastructure, and there are unlikely to be any material timing advantages in pursuing Option 1. It also best sustains momentum on delivering the Councils commitment to innovative and sustainable new development via Garden Communities. The Inspector's letter to the Councils noted that 'my findings do not necessarily represent a rejection of their commendable ambitions for high-quality, strategic-scale development in North Essex.' The principle of Garden Communities accordingly has not been rejected and, to the contrary, has been gaining ever-greater support at Government level. This is evidenced by the following:

- The reinstatement of the garden city principles in the new NPPF (they were controversially removed from the draft version.)
- New legislation supporting the creation of Garden Community Development Corporations
- Financial support for the Councils' joint planning on Garden Communities
- Support for infrastructure required to enable development of Garden Communities, i.e. HIF bids, and A12/A120 decisions
- Growing national profile of North Essex Garden Communities

5.28 Braintree DC agreed to support Option 2 at their meeting held 23rd July. Similarly, the Leader of Tendring Council has written to all members stating that 'as progressing Option 2 follows through on the decision made by this Council when it approved the Local Plan, I have decided to therefore cancel the Local Plan Committee scheduled for 9th August 2018.' He will be making a further statement at the Council meeting on 11th September. Were the Councils not to reach a unanimous decision on which option to pursue, the effect would be the selection of Option 3 by default. Option 3 would result in the withdrawal of both section 1 and section 2 from examination and resubmission of an alternative plan. Progressing development of the current plan relies on all authorities pursuing the same option.

5.29 Timetable – All of the options introduce varying levels of delay as detailed in the pros and cons table. Option 2 is considered to involve a lesser level of delay with full adoption programmed for 2020/21, with all other options delaying full adoption until 2022 at the earliest. Additionally, Option 2 secures a lower OAN than the other options.

- 5.30 There is a lot of work already undertaken that the Councils can be proud of and this has been recognised at the highest levels. Neil Stock, Leader of Tendring District Council, received a letter from James Brokenshire MP, the new Secretary of State for Housing, Communities and Local Government (MHCLG) stating: “The North Essex Garden Communities Scheme is one of the most ambitious of the garden town and village projects supported by MHCLG not just in terms of the scale and complexity of development proposed, but also the level of collaboration achieved between the North Essex local authorities including Tendring.”

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://colch.sharepoint.com/:b:/s/Store/DyLi/EZA0GdflinZFsYaVaABNZigBvK/SbQowOONFR-CqjyG4XAQ>

7. Strategic Plan References

- 7.1 Strategic planning and adoption of a Local Plan supports all four of the strategic goals in the 2018-21 Strategic Plan, including Growth, Responsibility, Opportunity and Wellbeing.

8. Consultation

- 8.1 While there are no direct consultation requirements concerning making a decision on options, in general terms consultation on the Local Plan is carried out in line with the Council’s Statement of Community Involvement and The Town and Country Planning (Local Planning) (England) Regulations 2012.

9. Publicity Considerations

- 9.1 Decisions on Local Plan issues create a high level of comment and will therefore need to be managed with press releases and other publicity measures.

10. Financial implications

- 10.1 A decision on Local Plan options will have an effect on the Council’s forward budgeting for Local Plan work.

11. Community Safety Implications

- 11.1 Development of a new Local Plan will address the community safety implications of creating sustainable communities.

12. Health and Safety Implications

- 12.1 Development of a new Local Plan will address the health and safety implications of creating sustainable communities.

13. Risk Management Implications

- 13.1 Progress in adoption of a new Local Plan will help to secure a plan led approach to development and to reduce the risk of inappropriate development being permitted.

Appendices

- Appendix 1 – Letter to Inspector on options
- Appendix 2 - Legal Advice on Options from Stephen Ashworth, Dentons
- Appendix 3 – Pros and Cons for Options 1 and 2
- Appendix 4 – Inspector's letter of 2 August concerning Option 1
- Appendix 5 – Counsel Opinion

Appendix 1 – letter to inspector

Dear Mr. Clews,

Questions of clarification on the options set out in the post-examination letter

We thank you for your post-examination letters dated 8th and 27th June 2018 which, taken together, set out your advice to the North Essex Authorities [NEAs] as to the further steps necessary for the Section 1 Local Plan to be made sound and legally-compliant. Whilst we are naturally disappointed that you have found that the plan cannot proceed to adoption as quickly as we had originally hoped, we are none the less pleased with the way you have conducted the examination to date and the way in which you have clearly set out your concerns about the Garden Communities and the steps needed to address those concerns.

We would like to take up your offer in paragraph 158 of the first letter to seek your further advice.

We are clear about the implications of Options 2 and 3 so this letter just addresses Option 1.

“Option 1 would be for the NEAs to agree to remove the GC proposals from the Section 1 Plan at this stage, and commit to submitting a partial revision of Section 1 for examination by a defined time, for example within two or three years. This would involve drawing up main modifications to remove the current GC proposals and address the other soundness issues identified above. The NEAs would also need to amend their Local Development Schemes [LDS] to include the proposed partial revision to Section 1.

These steps should enable the Section 2 examinations to proceed, and subject to the findings of those examinations and to consultation on the main modifications to Section 1 and (potentially) to Section 2, each Local Plan should then be able to proceed to adoption. In preparing for the Section 2 examinations the NEAs would, of course, need to consider any implications of the removal of the current GC proposals – and any implications of my forthcoming findings on policy SP3 – for housing land supply in each NEA in the years before the partial revision comes forward.

Following the Section 2 examinations, under Option 1 the NEAs would then carry out further work on the evidence base and Sustainability Appraisal, as outlined in my comments above on the GC proposals. That further work would provide the basis for revised strategic proposals to be brought forward for examination as a partial revision to the Section 1 Plan, within the timescale identified in the revised LDS. The revised strategic proposals could in principle include one or more GC(s), if justified by the further evidence and SA work.”

Option 1 appears to be designed to enable the NEAs to proceed quickly to the adoption of a slimmed-down Section 1 and to progress to the Section 2 examinations so long as the NEAs commit to a partial review within two or three years – at which

point Garden Communities could be re-introduced if justified by the further evidence and SA work.

In order to modify Section 1 to remove the Garden Communities we would need to carry out an updated Sustainability Appraisal and, given the scale of the change, advertise both. The Sustainability Appraisal would have to consider the Garden Community options as a realistic alternative to what would then be a decision not to have a spatial dimension to housing delivery. At the moment we have not identified any additional evidence required to support the Option 1 changes to Section 1. If there are objections from the promoters then we are assuming that there would need to be a further hearing into those objections before you can report and reach a conclusion on whether the modified Section 1 is sound.

We note that in preparing for the Section 2 examination the NEAs would need to consider any implications of the removal of the current GC proposals for housing land supply in each NEA in the years before the partial revision comes forward. If there is a partial review as you suggest then it is possible that that partial revision will not support the GC proposals and this is an implication that will have to be considered. As a new plan it would need to address the updated housing numbers in accordance with the NPPF. As you indicate the partial review would be submitted after the Section 2 plans have been adopted. If garden communities are still proposed in a partial review then some of the work that we were proposing be incorporated in the Garden Community DPDs could be included in the plan to reduce the time before delivery but given that there would be a 5 year+ delay before the adoption of Garden Community policies it is unlikely that any of the garden communities would be able to make a material contribution to housing supply in the period up to 2033.

As it stands, the NEAs collectively rely on the Garden Communities to deliver a proportion of the new homes required to meet the (now confirmed as sound) objectively assessed housing needs to the end of the plan period in 2033. Removing the GC proposals from the Section 1 Local Plan would result in a significant shortfall in the supply of housing sites in the Section 2s to meet needs up to 2033, particularly from year 6 onwards. An implication for the NEAs of removing GCs from Section 1 would therefore be a requirement to consider whether the present allocations and patterns of development in Section 2 would be appropriate if the GCs did not come forward as part of a future revision of Section 1.

Even if GCs are included in the Section 1 revision since they would not be able to make a material contribution to housing delivery in the period to 2033 other options for delivering housing would have to be explored within the Section 2 plans. We think that we would therefore also have to assess additional sites and potentially modify and re-consult on the Section 2s before progressing to the examinations. An updated Sustainability Appraisal would be required

With these issues in mind, we would be grateful if you could clarify what is envisaged through Option 1. Our questions are as follows:

- 1) Do you agree that the removal of the GC proposals from Section 1 will require an updated SA before Section 1 could be adopted?

- 2) If the SA has to be updated then it will have to address the GC proposals as a realistic alternative. In order to do so do you agree that it will need to address the limitations that you have found in relation to the existing SA?
- 3) If Section 1 is modified as proposed will you require further examination days to deal with the objections from the promoters of those sites if they make material objections to the deletion of the relevant policies?
- 4) Do you agree that the "implications" that have to be considered include the possibility that the GC proposals will not be promoted in a revised future Section 1?
- 5) Do you agree that the Section 2 plans will need to be reviewed to consider whether they still represent the "most appropriate strategy"?
- 6) In the submitted Local Plans, the garden communities begin delivering housing numbers from 2023/24. Do you agree that the Section 2 plans will need to be revised to include replacement housing sites given that under Option 1 the GC proposals (even if pursued through a later review) will no longer be able to make a material contribution to housing supply in the plan period?
- 7) Do you agree that section 2 cannot proceed until the issues of soundness relating to Section 1 are addressed?

Please do not hesitate to contact us via the Programme Officer if you have any queries or concerns about the content of this letter.

Yours sincerely

Emma Goodings

Braintree District Council

Karen Syrett

Colchester Borough
Council

Gary Guiver

Tendring District Council

Appendix 2 – Legal Advice from Dentons

Considerations in respect of Option 1

1 Introduction

- 1.1 The Inspector's letter of 8 June 2018 included three options for taking the Section 1 Local Plan forward. This note sets out the implications for the North Essex Authorities ('NEAs') of adopting the partial review approach which is the basis of the Inspector's Option 1.
- 1.2 Option 1 would involve:
- (a) proposed modifications to Section 1 to:
 - (i) remove the garden communities from Section 1 and address any other soundness issues;
 - (ii) incorporate any other changes resulting from the removal of the garden community proposals;
 - (b) the preparation of a new Sustainability Appraisal¹ of the amended Section 1;
 - (c) consultation on the amended Section 1 and new Sustainability Appraisal;
 - (d) a potential re-opening of the examination to consider objections to the deletion of the garden communities;
 - (e) if Section 1 as proposed to be modified is found to be sound² then the Inspector would report on proposed Main Modifications to the plan which would have to be published for comment;
 - (f) assuming that Section 1 is sound and in the absence of garden communities, a review of Section 2 to consider whether:
 - (i) the present proposed allocation of sites and development in Section 2 is the most appropriate strategy. If not further evidence base material will be required;
 - (ii) additional sites need to be identified to meet the housing and employment needs in the plan period, and if so, the preparation of the evidence base to support that;

¹ Note that the updated Sustainability Appraisal would have to consider the possibility of Garden Communities as one of the realistic alternatives. If the updated Sustainability Appraisal reaches the same conclusions as the original Appraisal then the strategy being adopted may not score best in terms of the significant likely environmental effects.

² The promoters of the Garden Communities may submit evidence persuading the Inspector that the original proposals remain the "most appropriate strategy".

- (g) a further Sustainability Appraisal for Section 2 (irrespective of the above) to consider the significant environmental effects;
- (h) consultation on any amended proposals and on the Sustainability Appraisal ahead of fixing the Section 2 examination; and
- (i) a partial review of Section 1 within 2-3 years at which point the garden communities could be re-introduced if that, judged against the revised NPPF test, is an appropriate strategy. That partial review would have to consider the then present evidence on housing numbers and run for 15 years, potentially requiring a partial reconsideration of the Section 2 plan.

2 Legislative test and soundness

- 2.1 The purpose of the independent examination into Section 1 is to determine:
- (a) that legal and procedural requirements have been satisfied³;
 - (b) whether it is sound; and
 - (c) whether the NEAs have complied with the duty to co-operate during the preparation of Section 1.
- 2.2 The starting point of the local plan examination is that the local planning authority have submitted a plan which it considers sound.⁴ To be sound the plan must be:
- (a) Positively prepared – being based on a strategy which seeks to meet objectively assessed development and infrastructure requirements;
 - (b) Justified – being the most appropriate strategy when considered against the reasonable alternatives, based on proportionate evidence;
 - (c) Effective – being deliverable over its period based on effective joint working on cross-boundary strategic priorities; and
 - (d) Consistent with national policy.
- 2.3 There are separate legal obligations in relation to the duty to co-operate. Care would need to be taken during the modification process that the duty to co-operate continues to be addressed, both as between the North Essex authorities and with those other authorities in the area who would be affected.

3 Soundness in respect of a revised Section 1

- 3.1 In terms of legislative compliance, it is open to the NEAs to have a purely strategic Section 1, provided that policies to address the identified strategic priorities are set out in the development plan documents, taken as a whole.

³ Including that it satisfies the requirements of sections 19 and 24(1) Planning and Compulsory Purchase Act 2004, Town and Country Planning (Local Planning) (England) Regulations 2012, and regulations

⁴ Para. 182 NPPF, which reflects section 20(2) Planning and Compulsory Purchase Act 2004

Although not in the NPPF the NPPG provides that Local Plans may be found sound conditional upon a review in whole or in part within 5 years of the date of adoption.

- 3.2 The garden communities could be deleted from Section 1 without necessitating any further evidence base work. Under Option 1, an amended Section 1 could identify the strategic priorities, set the overarching vision, set housing numbers and employment floorspace figures, but leave the distribution of development to the Section 2s.
- 3.3 The Inspector can find an amended Section 1 to be sound if satisfied that:
 - (a) the amended Section 1 approach of not having a spatial dimension to housing or employment delivery is the most appropriate strategy;
 - (b) the sustainability implications of that strategy have been considered in a Sustainability Appraisal including the possibility that the garden communities will not come forward on a partial review; and
 - (c) a strategy without garden communities is the most appropriate strategy when considered against the reasonable alternatives, including having regard to the garden communities proposals as a reasonable alternative.
- 3.4 The Inspector would have to consider whether the duty to co-operate had been met.

4 Soundness in respect of Section 2

- 4.1 The removal of the garden communities in an amended Section 1 would result in a significant shortfall in the supply of housing sites to meet the needs up to 2033.
- 4.2 The Inspector has suggested the inclusion of a review mechanism at 2-3 years in Section 1. It may be thought that an obligation to review remedies any potential deficiency sufficiently for Section 2 to be found sound. That is wrong for two reasons:
 - (a) if not pursued in the present Section 1 the Garden Communities cannot deliver the anticipated houses in the plan period even if they reappear in a subsequent review. There is a shortfall that has to be made up;
 - (b) it cannot be assumed that a partial review would necessarily choose to promote Garden Communities. The Inspector has indicated that further evidence is required to justify new communities. If there is confidence that the evidence is available then Option 2 should be followed; if there is doubt then that affects the approach to Section 2.
- 4.3 Absent the garden communities there would be a need for sites to accommodate the 'lost' 7,500 units (or at least a major part of them). The current Section 2, absent the garden communities, would fail the test of soundness given that:

- (a) it is not positively prepared as it fails to meet the entirety of the objectively assessed need;
 - (b) there is no credible evidence base to support the rationale not to address the under-provision, and to instead defer the identification of sites to the review stage; and
 - (c) in doing so it fails to comply with national policy.
- 4.4 In addition, the NEAs could not, in good conscience, promote a Local Plan which has, before the examination commences, a known under-provision.
- 4.5 As a result, the removal of the garden communities, even if a review mechanism were to be included in Section 1, would require the NEAs to:
 - (a) consider whether the present allocations and patterns of development in Section 2 remain appropriate given the garden communities are not coming forward at this time; and
 - (b) assess additional sites for meeting the housing needs at the latter end of the plan period.
- 4.6 The only way that we can see to avoid the need to assess additional sites is to shorten the plan period to the extent that the shortfall is not felt within the plan period. The new period would end at the point when the partial review is likely to be completed, perhaps in [2026/7]. This would mean a plan period of, say, 5 years post a 2022 adoption. That falls significantly short of the 15 year-time horizon required by paragraph 157 of the NPPF. We do not see how a plan for such a short period could be found sound.
- 4.7 If additional sites are identified to meet the shortfall there would be limited need for a partial review. In any event, there is no certainty that garden communities would still be an appropriate strategy (on the revised test which would then apply) at the point a review was carried out. As a result, whilst the introduction of a review mechanism appears to be a relatively straightforward solution, the scale of the under provision absent the garden communities means that the strategy for that shortfall cannot simply be deferred to a later review.