



# PLANNING POLICY AND LOCAL PLAN COMMITTEE

**DATE:** Wednesday, 15 July 2020  
**TIME:** 10.00 am  
**VENUE:** Meeting will be held in accordance with the provisions of SI 2020/392. Link to the live stream is found here:  
<https://www.tendringdc.gov.uk/livemeetings>

**MEMBERSHIP:**

Councillor Turner (Chairman)  
Councillor Fairley (Vice-Chairman)  
Councillor Allen  
Councillor Broderick  
Councillor Bush  
Councillor Chapman

Councillor C Guglielmi  
Councillor I Henderson  
Councillor S Honeywood  
Councillor Newton  
Councillor Scott

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Meeting papers can be provided, on request, in large print, in Braille, or on disc, tape, or in other languages.

For further details and general enquiries about this meeting, contact Ian Ford on 01255 686584 or email [democraticservices@tendringdc.gov.uk](mailto:democraticservices@tendringdc.gov.uk)

DATE OF PUBLICATION: Friday, 3 July 2020

## AGENDA

### **1 Apologies for Absence and Substitutions**

The Committee is asked to note any apologies for absence and substitutions received from Members.

### **2 Minutes of the Last Meeting (Pages 1 - 18)**

To confirm as a correct record, the minutes of the meeting of the Committee, held on Monday 8 June 2020.

### **3 Declarations of Interest**

Councillors are invited to declare any Disclosable Pecuniary Interests or Personal Interest, and the nature of it, in relation to any item on the agenda.

### **4 Questions on Notice pursuant to Council Procedure Rule 38**

Subject to providing two working days' notice, a Member of the Committee may ask the Chairman of the Committee a question on any matter in relation to which the Council has powers or duties which affect the Tendring District **and** which falls within the terms of reference of the Committee.

### **5 Public Speaking (Pages 19 - 22)**

The Council's Public Speaking Scheme for the Planning Policy & Local Plan Committee gives the opportunity for members of the public and other interested parties/stakeholders to speak to the Council's elected members on the Planning Policy & Local Plan Committee on any specific agenda item to be considered at that public meeting.

### **6 Report of Corporate Director (Place & Economy) - A.1 - Section 1 Local Plan: Planning Inspector's Post-Hearing Letter (Pages 23 - 138)**

- a) To report the findings of the Local Plan Inspector as to the legal compliance and 'soundness' of the Section 1 Local Plan for North Essex following the further examination hearings of January 2020 and receipt of his latest letter dated 15 May 2020.
- b) To note the next steps of the plan-making process required to make the plan 'sound' including consultation on the Local Plan Inspector's recommended 'modifications'; and
- c) To highlight any implications of the Inspector's findings for the content and next steps for progressing both the Section 2 Local Plan which contains planning policies and proposals specific to Tendring and the 'Development Plan Document' (DPD) which will set out more detailed parameters for the Tendring Colchester Borders Garden Community.

**7 Report of Corporate Director (Place & Economy) - A.2 - Colchester Tendring Borders Garden Community - Development Plan Document (Pages 139 - 146)**

To update the Planning Policy and Local Plan Committee on the work intended to be carried out for the preparation of a 'Development Plan Document' (DPD) for the Tendring Colchester Borders Garden Community which will guide its future growth and development.

**8 Report of the Corporate Director (Place & Economy) - A.3 - Proposed Amendment to the Statement of Community Involvement (Pages 147 - 152)**

To seek the Planning Policy and Local Plan Committee's approval of the proposed amendments to the Statement of Community Involvement (SCI) In light of the Coronavirus (COVID19) pandemic.

**9 Report of the Corporate Director (Place & Economy) - A.4 - Amendments to Policy PPL10: Renewable Energy generation and Energy Efficiency Measures (Pages 153 - 158)**

To seek the Planning Policy and Local Plan Committee's endorsement for suggested amendments to Policy PPL10 on 'Renewable Energy Generation' in Section 2 of the Council's emerging Local Plan. This follows a meeting involving some Members of the Council's Climate Change Working Group and the Planning Policy and Local Plan Committee held on 25<sup>th</sup> June 2020, where a form of wording was agreed for this Committee's consideration.

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**MINUTES OF THE MEETING OF THE PLANNING POLICY AND LOCAL PLAN COMMITTEE,  
HELD ON MONDAY, 8TH JUNE, 2020 AT 10.00 AM  
MEETING WAS HELD REMOTELY IN ACCORDANCE WITH THE PROVISIONS OF  
SI 2020/392. LINK TO LIVE STREAM IS FOUND HERE:  
[HTTPS://WWW.TENDRINGDC.GOV.UK/LIVEMEETINGS](https://www.tendringdc.gov.uk/livemeetings)**

|                       |  |
|-----------------------|--|
| <b>Present:</b>       | Councillors Nick Turner (Chairman), Zoe Fairley (Vice-Chairman)(except item 10), Terry Allen, Mike Bush, Jayne Chapman (except items 9 (part) and 10), Carlo Guglielmi, Ivan Henderson (except item 10), Sue Honeywood (except items 9 (part) and 10), Mary Newton, Gary Scott and Colin Winfield  |
| <b>Also Present:</b>  | Councillors Peter Cawthron, Graham Steady and John White   |
| <b>In Attendance:</b> | Ian Davidson (Chief Executive)(except items 8 - 10), Paul Price (Deputy Chief Executive & Corporate Director (Place and Economy)), Lisa Hastings (Assistant Director (Governance) & Monitoring Officer), Gary Guiver (Temporary Assistant Director (Strategic Planning and Place)), Ian Ford (Committee Services Manager), Will Fuller (Planning Officer), Emma Haward (Leadership Support Assistant), Matt Cattermole (Communications Assistant) and Karen Harges (IT Training Officer) |

**1. CHAIRMAN'S OPENING REMARKS**

*“Good Morning Fellow Councillors, Officers and Members of the Public.*

*Strange times call for strange responses. We will all do as best as we can to make this a productive and successful meet using Skype business.*

*I will shortly invite my fellow Councillors on the Committee to confirm they can hear the meeting and preferably see it too. I will then ask the appropriate Committee Officer to confirm that the live stream of this meeting is active. The purpose of both of these actions is to ensure that we meet the legal requirements for remote meetings of Councils.*

*Following this, I will move through the agenda for the meeting. This agenda is available on line at the Council’s website following the links to ‘Council and Democracy’, ‘Committees’ and then the Planning Policy & Local Plan Committee. A link to the live stream of the meeting is also available from there and in the next few days there will be a copy of the recording of the meeting.*

*My fellow Councillors on the Committee are being asked to keep their video feed on during the entire meeting. Officers of the Council and Councillors who are not on the Committee are respectfully asked to keep their video feed off while they are not contributing to the meeting. Everyone is asked to mute their microphone unless they are contributing. When contributing everyone is asked to say their name so that those listening in can follow who has said what.*

*At relevant times during the meeting I will check that Members of the Committee can hear the meeting, and preferably see it too. I would ask that where possible Members of the Committee contribute at those times so that we only have one person talking at a time. If a Member of the Committee does need to contribute at other times, for instance to declare an interest not already declared, then they should alert me as Chairman by interrupting briefly and then allowing me to invite them to make their point. Something like 'Chairman, it's Councillor XXX, I wish to make a point' will be sufficient.*

*As we move between items on the agenda, if there are members of the public who are to be invited to speak on the next item, I will pause after the end of the one item and before starting the next one. I will ask the Committee Officer to confirm if we have the members of the public invited in so that, when ready, they can make their contribution. Once this is confirmed I will start the item concerned. The same will apply to Councillors who are not members of the Committee and who are to contribute.*

*For the purposes of managing the meeting I will ask the Committee Officer to confirm that all members of the public who no longer have a contribution still to make under our public participation schemes have either left the meeting or will be removed. I will await that confirmation before moving on. They may continue to watch the live stream of the proceedings.*

*At the end of each item I will either, move a motion and ask for it to be seconded, or I will ask someone to propose and second a motion if one has not already been proposed. I will then ask each Councillor on the Committee in turn to identify how they vote on that motion. The Minutes will only record the overall decision of the Committee unless a recorded vote is requested in accordance with the normal rules.*

*So, in thanking you for your patience as I went through these arrangements for the meeting, I now intend to start by inviting my fellow Councillors on the Committee to confirm in turn they can hear the meeting and preferably see it too."*

## **2. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

Apologies for absence were submitted on behalf of Councillor Joy Broderick (with Councillor Colin Winfield substituting).

## **3. MINUTES OF THE LAST MEETING**

It was **RESOLVED** that the Minutes of the last meeting of the Committee held on 29 October 2020 be approved as a correct record.

## **4. DECLARATIONS OF INTEREST**

Councillor Scott declared a personal interest in relation to Agenda Item 9 – Report A.3 – Update on Neighbourhood Plans for Ardleigh and Alresford insofar as he was both a Ward Member and a parish councillor for Alresford.

Councillors Allen, Bush and Chapman each declared interests in relation to Agenda Item 7 – Report A.1 – Updated Housing Supply Position and Housing Trajectory insofar as there were development sites mentioned in the report and/or its appendices for which they were a Ward Member and/or a parish/town councillor.

Councillor G V Guglielmi declared an interest in relation to Agenda Item 7 – Report A.1 – Updated Housing Supply Position and Housing Trajectory insofar as Site SGG9 (Land off Colchester Road, Lawford) in Appendix 5 (Assessment of Alternative Sites) of the Strategic Housing Land Availability Assessment (SHLAA) was opposite his dwelling.

**5. QUESTIONS ON NOTICE PURSUANT TO COUNCIL PROCEDURE RULE 38**

On this occasion no Councillor had submitted notice of a question.

**6. PUBLIC SPEAKING**

Frances Grant made a statement in relation to item A.1 in which she stated the environmental and historic rural character grounds for maintaining the strategic 'green gap' between Lawford, Manningtree and Mistley and urged that Sites SGG9 and SGG 10 should be removed from the schedule of Alternative Sites in the SHLAA.

In relation to report A.1 – Updated Housing Supply Position and Housing Trajectory, John Hall asked:

*“URB13, Land off Grange Road, Lawford, continues to remain on the list and map of Alternative Sites even when:*

- 1. The first Planning Application by Gladman Developments 17/01950/OUT (which received over 280 written Objections) was refused by Tendring District Council,*
- 2. The second Planning Application by Gladman Developments 19/00067/OUT (which received over 310 written Objections) was refused by Tendring District Council,*
- 3. The Appeal by Gladman Developments against refusal by the Council was Dismissed by the Planning Inspector following a 6 day Public Inquiry in July 2019, APP/P1560/W/18/3201067*
- 4. Permission for a Judicial Review of that Inspector's decision, requested by Gladman Developments, was refused by High Court Judge Mr Timothy Mould QC on 25 February 2020,*
- 5. Your own report to this committee, Appendix 2 Table, states that deliverability of this site in the Plan period (2013 to 2030) is unlikely.*

*The Strategic Housing Land Availability Assessment (SHLAA) needs to be made clearer in respect of sites like URB13. It is misleading to policy makers, landowners, land promoters and the local community to continue to include a site which has been discounted. This perpetuates anxiety for the many local residents of Lawford, Manningtree and Mistley who are already having to come to terms with over 30% increase in housing stock resulting from over 1500 new homes which have recently received Planning Permission.*

*Can you therefore remove URB13 from your list of Alternative Sites or at least put sites like URB13 on a separate Table and Map because they have been discounted?”*

The Chairman of the Committee (Councillor Turner) replied as follows:-

*“Thank you Mr. Hall for your question.*

*Firstly I would like to congratulate the Lawford Tye Action Group for their professional and very effective participation in the Grange Road planning appeal which helped to see*

*off an unpopular and unwanted development in an area that has seen more than its fair share of planning applications in recent years.*

*The Strategic Housing Land Availability Assessment is not, in itself, a plan or a planning document identifying where development should go – that is the job of the Local Plan. It is however an important piece of the ‘evidence base’ which demonstrates how the Council has assessed a range of sites in determining which sites should, and indeed should not, form part of the Local Plan.*

*Whilst I appreciate Mr. Hall and other residents’ concerns about the depiction of the Grange Road site on the maps accompanying the assessment and potential confusion this might cause, it is absolutely essential that the site is shown as an ‘Alternative Site’ on the map and assessed for its suitability, availability and achievability (as indeed it is on page 56 of the assessment and page 96 of today’s agenda).*

*This is because the Grange Road site, along with a number of others shown in red as ‘Alternative Sites’, is the subject of a formal objection to the Local Plan from Gladman Homes which will need to be considered by the Planning Inspector when they come to examine Section 2 of the Local Plan hopefully later this year.*

*The assessment is an important part of the Council’s evidence that our Officers will rely on at the Section 2 examination to justify the reasons for excluding sites, such as Grange Road, from the Local Plan. To exclude the site from the assessment as Mr. Hall has suggested would leave the Council vulnerable to accusations that alternative sites have not been properly considered.*

*The assessment reflects the Council’s resistance to the Grange Road planning application, the damning rejection by the appeal Inspector and the judge, and the very good reasons why the Lawford Tye Action Group are strongly opposed to development in this location. In presenting this information to the Planning Inspector as part of this assessment, we should be in a very strong position to ensure the site continues to be excluded from the Local Plan.”*

In relation to report A.3 – Update on Neighbourhood Plans for Ardleigh and Alresford, Bill Marshall asked:

*“The Officer has stated that: Ardleigh - An 8 week public consultation has taken place, with no objections. This is not correct, and therefore the proposed NDPA for Ardleigh should not be endorsed by this Committee at this meeting.*

*Furthermore, until the residents of Ardleigh have been fully consulted on any NP recommendations should not come before this Committee.*

*Will the Chairman of the Committee undertake to ensure a full public consultation takes place with the residents of Ardleigh?”*

The Chairman of the Committee replied as follows:-

*“Thank you Mr. Marshall for your question. Mr. Marshall is well versed at attending these meetings and was present throughout the recent examination sessions for the Section 1 Local Plan.*

*At this first stage of the process, which is simply to establish the area to be covered by the Ardleigh Neighbourhood Plan, the level and nature of the consultation has been perfectly adequate, meets legal requirements and responses from key statutory consultees have been received.*

*Furthermore, today's report clearly explains that where a Parish Council is simply proposing the whole of its own administrative area for the purposes of a Neighbourhood Plan, the national guidance expects the District Council to agree that area without any question.*

*The position is more complicated for Parishes and other Neighbourhood Groups who propose areas that straddle parishes or form smaller defined areas that do not follow Parish lines. For Ardleigh, that is clearly not the case and this should be a fairly straight forward process.*

*When Ardleigh Parish Council progresses to the next stage and produces a draft of its Neighbourhood Plan, it will of course be important for residents of the area to be given decent opportunities to engage in the process and have constructive input. Our Officers will work constructively with the Parish Council to make sure the programme of engagement going forward achieves this.*

*Notwithstanding all of this, I am somewhat surprised that Mr. Marshall is seeking to delay the progress of Ardleigh's Neighbourhood Plan and I would instead advise him to engage positively with the Parish Council as I'm sure he has ideas and suggestions that might, or might not, be of interest to them."*

Mr Marshall also made statements in relation to items A.1 and A.2 in which he urged the Council, in the light of recent events, to withdraw from the joint Section 1 of the Local Plan with Braintree and Colchester Councils and to concentrate solely on its Section 2 of the Local Plan.

In relation to report A.3 – Update on Neighbourhood Plans for Ardleigh and Alresford, Parish Councillor Chris Whitfield (Chair of the Ardleigh Neighbourhood Plan Steering Group) asked:

*"How soon can Ardleigh Parish Council expect to engage with the Strategic Planning and Placement Team, to fully understand the support and funding available to them in the preparation of their Neighbourhood Plan?"*

The Chairman of the Committee replied as follows:-

*"I thank Mr. Whitfield for his question and am happy to advise that our Officers are keen to work with Ardleigh Parish Council at the earliest opportunity to assist in the preparation of their Neighbourhood Plan.*

*Indeed Officers are already giving consideration to the Parish Council's request for advice on the number of homes that might be required in the Ardleigh area as part of the plan.*

*As soon as this Committee has agreed to the area for the Neighbourhood Plan, Officers will arrange to meet (virtually or otherwise) to discuss and share information including*

*the consideration of housing figures, analysis of the results of the public consultation and the national and local policy requirements – as well as funding opportunities.*

*William Fuller from the Strategic Planning and Place Team will be the Parish Council's main point of contact and will no doubt contact Mr. Whitfield shortly after today's meeting."*

**7. CHAIRMAN'S UPDATE - FORMAL OUTCOME OF EXAMINATION-IN-PUBLIC OF PART 1 OF THE LOCAL PLAN**

The Chairman of the Planning Policy and Local Plan Committee (Councillor Turner) made a statement on the contents of the Local Plan Inspector's Letter dated 15 May 2020 as follows:-

*"I am very pleased to report that Tendring District Council offered for Examination Section 1 of its Local Plan. It was found to be 'sound'.*

*It was offered in conjunction with Colchester Borough Council and Braintree District Council's Section Ones and the examination was considered to be the largest for any Local Plan in England. Together, the 3 authorities are known as North Essex Authorities, NEAs for short. The combined Plan was found to be 'not sound' by the Inspector.*

*The examination was held at Colchester Football Club over 7 days in January. I managed to attend for 5.5 days as an observer. The level of detail and information offered and received was intense. Some days there were 4 Queens Counsels in attendance, representing various bodies, Companies and the North Essex Garden Communities Ltd.*

*Mr Guiver was one of the spokespersons for the North Essex Authorities. He held his head up in the highest company, not only as the mouthpiece but also as one of the main authors of our Section One.*

*He was not found wanting.*

*Thank you Gary and your team. Very, very well done.*

*An important part of the Inspector's Letter received three weeks ago last was that he upheld our Dwellings per Annum target of 550. That is wonderful news, although we will still have to take into account the standardised formula as shown in the 2019 edition of the NPPF. The figure of 865 dpa will only go away, when we ratify this part of the plan in Full Council. A lot more on that in the next item.*

*Our idea of a Garden Community on the Tendring and Colchester Borders for upwards of 7,500 houses over the next 30 to 40 years is also found to be viable and sound. That means Tendring's extra growth can all be accommodated for this Local plan period and probably for most if not all of the succeeding Plan, i.e. 2033 onwards.*

*Finally, the successful bid, made by Essex Highways to the Housing Infrastructure Fund (HIF) has granted £65m to build a link road between the A133 and A120 and a further £34m to supply a rapid transport system from the Garden Community into and beyond Colchester. This is contingent on 50 houses and the road being built plus the RTS being*

*in place by March 2024. To that end the Cabinet at County have agreed to the route of the proposed road and plans are being drawn up to be submitted for Planning Permission by Christmas this year. The road builders will then be able to start in 2021. Preparation on the Master Plan for the Garden Community has begun so that we can start work on that first 50 houses and have them completed by March 2024.*

*The Inspector has invited the North Essex Authorities to agree with his recommendations for progressing the Local Plan to the next stages of the process or otherwise withdraw the plan and start again. This is shown in stark English on para 267 of his Letter.*

*To that end, a formal decision for how to proceed will be required from all three Councils and another meeting of this Committee will be arranged for a date next month to consider the Inspector's letter in more detail along with the specific changes to the Local Plan he has recommended. Our partner authorities are making similar arrangements with the aim of coming to a shared decision.*

*Discussions are also being had between Officers and Members of the three Councils over the future role of North Essex Garden Communities (NEGC) Ltd in light of the Inspector's findings but mainly because we are moving from the planning and promoting Garden Communities to delivery phase of Tendring Colchester Borders.*

*Officers will keep us updated in the coming days and weeks."*

Councillor G V Guglielmi declared a personal interest in the contents of the Statement insofar as he was an alternate Board Director of NEGC Ltd.

Members asked questions of the Chairman on his statement which he responded to along with the Chief Executive and the Assistant Director (Governance) & Monitoring Officer.

The Committee noted the foregoing.

## **8. REPORT OF THE CORPORATE DIRECTOR (PLACE AND ECONOMY) - A.1 - UPDATED HOUSING SUPPLY POSITION AND HOUSING TRAJECTORY**

Councillors Allen, Bush and Chapman each had earlier declared interests in relation to Agenda Item 7 – Report A.1 – Updated Housing Supply Position and Housing Trajectory insofar as there were development sites mentioned in the report and/or its appendices for which they were a Ward Member and/or a parish/town councillor.

Councillor G V Guglielmi had earlier declared an interest in relation to Agenda Item 7 – Report A.1 – Updated Housing Supply Position and Housing Trajectory insofar as Site SGG9 (Land off Colchester Road, Lawford) in Appendix 5 (Assessment of Alternative Sites) of the Strategic Housing Land Availability Assessment (SHLAA) was opposite his dwelling.

The Committee had before it a comprehensive report (and appendices) of the Corporate Director (Place and Economy) (A.1) which reported:-

- the Planning Inspector's latest conclusions on the housing requirement for Tendring;

- the number of new homes built in Tendring during the 2019/20 financial year and the up-dated year-by-year 'trajectory' for future housebuilding (taking the impact of COVID-19 into account);
- the current housing land supply position (the 'five-year' supply); and
- the implications for Section 2 of the Local Plan and the determination of planning applications.

### Key Points

Members were informed of the key points of the report as follows:

- the Planning Inspector for the Section 1 Local Plan had again confirmed 550 homes per year as a 'sound' housing requirement for Tendring;
- 784 new homes had been built in the 2019/20 financial year, meaning that the housing requirement had been achieved for the fourth year running – however, the COVID-19 coronavirus outbreak was expected to have a significant impact on the rate of housebuilding in 2020/21 and future years;
- even with adjustments for the impact of the COVID-19, there was still sufficient land allocated for housing development in the emerging Local Plan, or with planning permission, to comfortably achieve the District's housing requirement up to 2033 without the need for any additional sites; and
- the Council could only demonstrate a 4.45 year supply of deliverable housing sites against the Government requirement to demonstrate a 5 year supply – but this was only because of a technicality within Government planning policy which required Councils to measure housing delivery against nationally set targets until such time as their Local Plan was formally adopted. This had implications for the way the Council currently dealt with planning applications.

### Housing Requirement

In respect of the housing requirement it was reported that, following the further examination hearings for Section 1 of the Local Plan, the Planning Inspector had concluded, in his 15 May 2020 letter, that the 'objectively assessed housing need' (OAN) of 550 homes a year, as set out in the emerging plan, was still based on sound evidence and that there was no need to increase the figure in response to objections from some developers and landowners. The housing requirement for the period of the Local Plan 2013-2033 should therefore remain at 11,000 homes. With approximately 3,600 homes already built between 2013 and 2020, the remaining requirement between now and 2033 stood at approximately 7,400.

The Planning Inspector had also concluded that the Tendring Colchester Borders Garden Community could reasonably be expected to contribute 1,000 homes towards Tendring's housing requirement between now and 2033; if the North Essex Authorities decided to proceed with that proposal.

### Housing Completions and Future Trajectory

In relation to housing completions and future trajectory the Committee was made aware that in the period 1 April 2019 to 31 March 2020, a net total of 784 new homes had been

completed in Tendring. This meant that the housebuilding target of 550 homes a year had now been achieved for a fourth year in succession. However, the COVID-19 coronavirus outbreak was already having a significant impact on rates of housebuilding and this was likely to continue some way into the future.

It was reported that Officers had updated the Council's 'Strategic Housing Land Availability Assessment' (SHLAA) which contained a trajectory for future housing building and adjustments to predicted housing delivery that had been made in response to COVID-19 and various other factors and information. It was likely that housebuilding would fall to around 550 in the 2020/21 financial year, but that delivery would then gradually improve over subsequent years.

#### Implications for the Local Plan

The Committee was informed that when the Local Plan had been submitted to the Secretary of State in October 2017, the housing supply figures set out in the various tables within the Plan had provided a fairly accurate account of the position at that time. However, in the two and a half years that had passed since the Plan was submitted, more houses had been built, more sites had obtained planning permission (either through decisions of the Council or through the appeal process) and the anticipated timescales for certain developments had needed to be reviewed – particularly in light of the potential impacts of the COVID-19 outbreak, the Planning Inspector's conclusions on Section 1 of the Local Plan and more up to date information supplied by developers and landowners.

It was therefore proposed that, ahead of the examination of Section 2 of the Local Plan, the Council should submit a 'topic paper' to the Planning Inspector which updated all of the housing figures in the Local Plan. Therefore the Committee was requested to agree the proposed updates, which included 'pushing back' the expected timescales for some of the larger developments in the Local Plan which were yet to obtain planning permission and for which more time was likely to be required for master planning and negotiations with landowners and developers. The 'Hartley Gardens' development proposed for north-west Clacton was the most notable of the developments that were expected to require more time for landowner discussions and master planning.

However, the 'good news' was that, even with adjustments for COVID-19, the updated SHLAA demonstrated that the sites allocated for housing development in the emerging Local Plan, along with sites that had already obtained planning permission, were more than sufficient to deliver the remaining 7,400 homes needed between now and 2033 – incorporating a healthy level of 'headroom' flexibility. There was subsequently no need, at this time, to include any additional sites in the Local Plan for housing.

#### Five Year Housing Supply and Decision Making

Members were aware that the Government required Councils to demonstrate an ongoing 'five year supply' of deliverable housing sites in order to ensure that they were well placed to meet their future housing needs. However, in February 2019, the Government had amended the National Planning Policy Framework (NPPF) which affected the way Councils calculated whether they could identify a five year housing supply – which had had particularly unfortunate implications for determining planning applications in Tendring.

The Committee was advised that where a Council's adopted Local Plan housing policies were more than five years old (as was the case in Tendring), they were required to calculate housing supply against a 'local housing need' figure generated using the Government's standard methodology which, for Tendring, had meant a housing target of 865 homes a year as opposed to the 550 homes a year target in the emerging (but yet to be adopted) Local Plan. This significantly higher figure was based on official population and household projections which, for Tendring, were known to contain errors and were considered to be substantially 'over-inflated'.

Therefore, despite the Planning Inspector's endorsement of 550 homes a year as the housing requirement for Tendring, and the very strong performance against that target in recent years, the change in Government planning policy meant that this Council could technically only demonstrate a 4.45 year supply of deliverable housing sites. Because of this, until Section 1 of the Local Plan was formally adopted or the Council was otherwise able to demonstrate a five year housing supply against the higher figure, planning applications for new housing would still have to be considered on their merits – weighing up the harm against the benefits, even where they were contrary to the emerging Local Plan.

During the consideration of this item the Temporary Assistant Director (Strategic Planning and Place) undertook to rename Appendix 5 of the SHLAA as "Assessment of Discounted and Alternative Sites" and to amend the key to the related Maps accordingly.

Having duly considered and discussed the contents of the report and its appendices:-

It was moved by Councillor G V Guglielmi, seconded by Councillor Bush and unanimously:-

**RESOLVED** that the Planning Policy and Local Plan Committee endorses the contents of this report and the new Strategic Housing Land Availability Assessment (SHLAA) (attached as Appendix 2) as evidence to support the deliverability of housing proposals in the new Local Plan and to demonstrate an up-to-date housing land supply position for the purposes of updating the Local Plan (as set out in Appendix 1), determining planning applications and contesting planning appeals.

**9. REPORT OF THE CORPORATE DIRECTOR (PLACE AND ECONOMY) - A.2 - HOUSING SIZE, STANDARDS, EFFICIENCY AND ACCESSIBILITY**

The Committee had before it a comprehensive report (and appendix) of the Corporate Director (Place and Economy) (A.2) which sought its endorsement for suggested amendments to policies in the Council's emerging Local Plan that related to the design, layout and quality of new housing.

Key Points

Members were informed that the suggested amendments to Local Plan policies set out in this report were aimed at:

- explicitly embracing the Government's technical housing standards which set minimum requirements for internal space in new housing;

- explicitly setting out the Council's expectations for minimum garden sizes in Tendring, rather than referring developers to the standards set out in the separate Essex Design Guide;
- promoting the installation of solar panels and vehicle charging points in new residential properties along with other measures to improve sustainability, including water efficiency;
- promoting improved standards of accessibility to ensure homes were fit for purpose and adaptable for older and disabled people; and
- addressing any other policy wording issues either identified by Officers or raised by objectors to the Local Plan during the last formal consultation period in 2017.

The Committee was reminded that Section 2 of the Council's emerging Local Plan contained a number of policies concerned with the design, quality and layout of development as well as renewable energy and water efficiency. Given the time that had passed since the Local Plan had been submitted to the Secretary of State to begin the examination process, Officers had been reviewing the content and specific wording of those policies, taking into account any comments that had been submitted during the last statutory consultation period in 2017, any changes in Government policy and any new evidence or other factors that had arisen. In response to specific local concerns (including those raised by the Council's Planning Committee when determining planning applications), the Chairman of the Planning Policy and Local Plan Committee had also asked Officers to consider, specifically, whether the wording of any of the policies in the Section 2 Local Plan could be strengthened to help improve the quality of new homes, particularly in respect of their internal space, garden sizes, energy efficiency and accessibility. Those matters were considered in this report.

#### Internal space standards

It was reported that one of the concerns that had arisen both nationally and locally was the size of new residential property, in particular their internal dimensions and the effects they could have on quality of life. For some years, Members of this Council had referred to, and advocated a return to, the 1960s 'Parker Morris' housing standards (or a modern day equivalent) as a way of improving the size and quality of new housing in Tendring. In 2015, the Government had introduced optional internal space standards called the 'Technical housing standards - nationally described space standard' (often referred to as 'The Standard') which local authorities could adopt through their Local Plan policies, so long as they could evidence that they were necessary, economically viable and would not have a negative impact on affordability. Those standards were similar in many respects to the historic Parker Morris approach and Officers were satisfied that there was sufficient evidence of need and viability to justify their application.

Members were aware that through the emerging Local Plan, the Council had already sought to embrace such minimum internal standards. Policy LP3 'Housing Density and Standards' in Section 2 of the Council's emerging Local Plan for example required new residential and mixed-use development in order to achieve an appropriate housing density that had regard to, amongst other things, "*national minimum floor-space standards*". Similarly, Policy LP4 'Housing Layout' required the design and layout of new residential and mixed-use developments in the Tendring District to meet certain criteria,

including that they “ensure dwellings meet minimum standards of internal space”. However, as neither policy explicitly referred to the Government’s Standard Officers therefore considered that amendments would be sensible in order to avoid any ambiguity.

Members were further aware that Section 2 of the Local Plan had yet to be examined by an independent Planning Inspector (pending the final outcome of the Section 1 examination); and whilst Policies LP3 and LP4 had not attracted a significant level of objection during the last round of public consultation in 2017, there were a relatively small number of objections from the development industry which - 1) challenged the Council’s justification for wanting to apply minimum space standards and requiring evidence on need and the impacts on viability and affordability; and 2) sought clarification on which standards would apply. There were also a number of comments about the wording of the policies and how their various criteria would apply in practice. A number of amendments had therefore been put forward for Members’ consideration.

#### Private Amenity (Garden) Standards

The Committee recalled that Policy SPL3 in the emerging Local Plan entitled ‘Sustainable Design’ required, amongst other things, that new development made provision for private amenity space. Policy LP4 on ‘Housing Layout’ then referred to the Essex Design Guide for Residential & Mixed-Use Developments, within which were contained the standards for private amenity or garden sizes that planning applications were judged against. Unlike the 2007 adopted Local Plan, the emerging Local Plan did not contain a specific policy of its own in relation to garden sizes.

On reflection, because the approach set out in 2007 Local Plan remained broadly in line with the current Essex Design Guide and there had been calls for the emerging Local Plan to be more explicit in respect of garden sizes, Officers were now recommending that it be suggested to the Planning Inspector, as part of the examination of the Section 2 Plan, that a private amenity or garden sizes policy was included in the new Local Plan. Details of this were set out in the Officer’s report.

#### Energy efficiency and climate change

Members were advised that another area of concern was the ability of new residential property to minimise energy consumption and to embrace other measures aimed at reducing carbon emissions and tackling global climate change. Whilst today’s building regulations already required new homes to meet high levels of energy efficiency through their design, insulation and technology; authorities could require, through their planning policies, developments to exceed regular standards.

In August 2019, this Council had declared a ‘climate emergency’ which committed it to preparing an action plan for consideration by Councillors with the aim of making its activities carbon neutral by 2030. A Climate Change Working Group had been set up to explore the opportunities and to develop recommendations for achieving this goal and consultants were assisting with the preparation of the action plan. On the request of the Chairman of the Planning Policy and Local Plan Committee, Officers had considered whether the policies in the emerging Local Plan could be strengthened to require, specifically, new residential development to be installed with solar panels and charging points for electric vehicles (in anticipation of significant increases in electric car ownership in the future). Officers had considered the potential cost of installation and

the potential visual impacts in concluding that the policies could be strengthened and amendments had therefore been put forward for Members' consideration.

#### Water efficiency

The Committee was aware that, as the population grew and more new homes were built, there was increasing pressure to make efficient use of water resources and the design and specification of new housing had a role to play in achieving such efficiencies. Whilst the Tendring District was not identified specifically as an area of serious stress in terms of water supply, there were obvious benefits to householders and to the wider environment to reducing consumption. Policy PPL5 in the emerging Local Plan entitled 'Water Conservation, Drainage and Sewerage' already required developers to consider measures aimed at maintaining the supply of drinking water and it was considered that the requirements of the policy could be strengthened to require such measures to be implemented.

#### Accessibility and adaptability

It was suggested that, with a higher than average proportion of older and disabled residents in the Tendring area, there was a good argument for having more residential property that was easily accessible for people with mobility impairments and/or adaptable to people's changing mobility through the course of their life. The building regulations included two optional requirements in relation to access in residential property which could be specifically promoted through policies in the Local Plan namely

- Requirement M4(2) which required new dwellings to make reasonable provision for most people to access the building and to incorporate features that made it potentially suitable for a wide range of occupants, including older people, those with reduced mobility and some wheelchair users; and
- Requirement M4(3) which required new dwellings to make reasonable provision, either at completion or at a point following completion, for a wheelchair user to live in the dwelling and for them to use any associated private outdoor space, parking and communal facilities that might be provided for the use of the occupants.

It was further reported that Policy SPL3 in the emerging Local Plan (which dealt generally with 'Sustainable Design') already included a requirement that, on housing developments of 10 or more dwellings, 10% of market housing should be Building Regulations Part M4(2) compliant and, for affordable housing, 10% should be Part M4(2) compliant and 5% should be Part M4(3) compliant. This requirement had been tested and confirmed as economically viable through the Council's viability assessments. However, Officers considered that those requirements could be set out more clearly and explicitly within Policy LP4 which was more specifically concerned with the design and layout of new housing development.

#### Summary of Suggested Policy Amendments

##### *Policy SPL3 - SUSTAINABLE DESIGN*

It was reported that the suggested amendments to Section A of the policy in respect of landscape character and the use of locally occurring and characteristic hedge species had been advised by Essex County Council in its representations to the Local Plan and the suggested amendments to Section B in respect of highways responded to comments raised by Persimmon and Gladman Homes. The additions to criterion d) of Section B responded to the need for action in response to the climate emergency. The suggested deletion of the asterisk and paragraph relating to Part M accessibility standards was to enable such guidance to be more logically set out in Policy LP3. The inclusion of a new criterion e) to Section C of the policy was to address a particular concern raised by the Chairman of Planning Policy and Local Plan Committee which reflected local concerns about the impact of development on neighbours during the construction phase and the damage caused to the highway and public realm.

#### Policy LP3 - HOUSING DENSITY AND STANDARDS

Members were informed that the suggested amendments to criterion b) of Policy LP3 were to make it explicit that it was the nationally described space standards that should be met in new residential developments and to refer to the new section of the policy proposed in respect of minimum garden sizes, which reflected the wording already present in the Council's adopted Local Plan. The reference to public rights of way in criterion f) of the policy was in response to a specific representation from the Essex Bridleways Trust. The inclusion of the paragraph relating to Part M accessibility standards followed the suggested deletion of such wording from Policy SPL3.

#### Policy LP4 - HOUSING LAYOUT

The Committee was advised that numerous amendments were proposed for Policy LP4 – mainly aimed at addressing local concerns about the quality of new residential development and providing more detail of the principles expected to be followed. The simplified reference to development density responded to representations from developers highlighting the potential confusion caused by the existing wording around town centres, semi-rural areas and urban areas. The additional reference to Neighbourhood Plans and Village Design Statements should help to ensure that those planning documents produced at a local or parish level and adopted by the District Council were given due consideration in the determination of housing schemes.

#### Policy PPL5 - WATER CONSERVATION, DRAINAGE AND SEWERAGE

Members were made aware that the amendment to the second paragraph relating to the sewerage provision responded directly to the advice of Natural England and the additions to the third paragraph were simply designed to ensure that measures aimed at minimising water consumption were not only considered, but also implemented.

#### Policy PPL10 - RENEWABLE ENERGY GENERATION

Members were advised that the suggested amendments to Policy PPL10 were aimed at strengthening the policy to ensure, amongst other things, that the incorporation of solar panels into new residential and other developments was a clear requirement and expectation of the Council, apart from Conservation Areas where it might not be appropriate visually.

#### Next steps

The Committee was aware that the Local Plan had already been submitted to the Secretary of State for it to be examined by a Government-appointed Planning Inspector. The Inspector had the power to recommend 'modifications' to the Local Plan, following the examination, aimed at addressing any issues with the soundness of the plan. Whilst it would be at the Inspector's discretion which modifications were formally recommended, the Council would have the opportunity to suggest changes to the Inspector, for their consideration, as part of the examination process. It was therefore recommended that the changes outlined in this report be put forward to the Inspector for their consideration, at the appropriate time.

Having duly considered and discussed the contents of the report and its appendix:-

It was moved by Councillor Turner, seconded by Councillor G V Guglielmi and:-

**RESOLVED** that the Planning Policy and Local Plan Committee -

- a) has considered the Officers' suggested amendments to Policies SPL3, LP3, LP4, PPL5 and PPL10 in the Tendring District Local Plan 2013-2033 and Beyond: Publication Draft (the emerging Local Plan) as set out in Appendix 1 to this report be approved;
- b) authorises the Assistant Director (Strategic Planning and Place), in consultation with the Chairman of the Planning Policy and Local Plan Committee, to put forward the additional suggested amendments to the above policies based upon the Committee's debate to the Planning Inspector for their consideration as part of the examination of the Section 2 Plan; and
- c) requests that further consultation is undertaken with the Council's Climate Emergency Working Party (with invites extended to members of the Planning Policy and Local Plan Committee, who wish to be involved) prior to reporting back to the Committee.

**10. REPORT OF CORPORATE DIRECTOR (PLACE AND ECONOMY) - A.3 - UPDATE ON NEIGHBOURHOOD PLANS FOR ARDLEIGH AND ALRESFORD**

Councillor Scott had earlier in the meeting declared a personal interest in relation to Agenda Item 9 – Report A.3 – Update on Neighbourhood Plans for Ardleigh and Alresford insofar as he was both a Ward Member and a parish councillor for Alresford. He participated in the discussion of this item but took no part in the voting on the Alresford Neighbourhood Plan.

The Committee had before it a detailed report (and appendices) of the Corporate Director (Place and Economy) (A.3) which updated it on the progress of Ardleigh Parish Council and Alresford Parish Council in producing 'Neighbourhood Plans' for their respective areas and which advised on the next steps in the process.

Key Points:

- Ardleigh Parish Council had begun the process of preparing a Neighbourhood Plan and was seeking the District Council's agreement to designating the whole of the Ardleigh Parish as the 'Neighbourhood Development Plan Area'. Officers had

recommended that the Planning Policy and Local Plan Committee agrees to this in order to allow the Parish Council to continue work on its plan.

- Alresford Parish Council was at a more advanced stage of preparing its Neighbourhood Plan, having prepared a draft and undertaken public consultation. The Parish Council now had to formally submit its final version to the District Council in order to initiate the next steps including final consultation, independent examination and local referendum.
- Neighbourhood Plans were designed to supplement the policies and proposals in the District Local Plan. Officers work constructively to assist the Parish Councils in preparing their Neighbourhood Plans to ensure this, as well as compliance with the various legal and policy requirements.

Members were informed that Neighbourhood Plans could be prepared by either Town and Parish Councils or other recognised neighbourhood forums in order to set out specific planning policies and proposals for their local area. Neighbourhood Plans must support and not prejudice the delivery of strategic policies in the District Local Plan but they could add an additional level of guidance and could propose additional developments aimed at addressing locally identified needs and aspirations. Once formally adopted, a Neighbourhood Plan formed part of the Statutory 'Development Plan', alongside the District Local Plan and became a material consideration in the determination of planning applications.

It was reported that there was a formal process for preparing a Neighbourhood Plan that included the identification and confirmation of the 'Neighbourhood Plan Area'; public consultation; independent examination; a local referendum; and formal adoption by the District Council as the Local Planning Authority. To date, Ardleigh Parish Council and Alresford Parish Council were the only bodies in Tendring that were actively involved in preparing Neighbourhood Plans.

Members were made aware that Ardleigh Parish Council was at the very beginning of the Neighbourhood Planning process having submitted an application to Tendring District Council to agree the proposed Neighbourhood Development Plan Area (NDPA). As was common with many Neighbourhood Plans, the Parish Council had applied for the whole of the Ardleigh Parish to be designated as the NDPA.

The Committee was advised that the proposed NDPA had to be formally approved for designation by the Local Planning Authority, although regulations and Government guidance dictated that where a Parish or Town Council simply applied to designate its own administrative area, the Local Planning Authority was expected to agree. Furthermore, an eight-week consultation on the proposed NDPA had been carried out earlier this year and it had attracted no objections. The Committee was therefore being asked to agree to the designation of Ardleigh Parish as a Neighbourhood Development Plan Area, thus allowing Ardleigh Parish Council to progress within the preparation of its Neighbourhood Plan.

It was noted that Neighbourhood Plans must compliment and not prejudice the policies and proposals in the District Local Plan. Therefore, Ardleigh Parish Council would need to ensure the policies and proposals in their Neighbourhood Plan did not prejudice the delivery of, amongst other schemes, the Tendring Colchester Borders Garden Community of which, pending the final outcome of the Section 1 Local Plan examination, a large proportion would be located in Ardleigh Parish.

The Committee was also informed that Alresford Parish Council was at a more advanced stage in the process and had prepared a draft Neighbourhood Plan that had been the subject of a seven-week public consultation. Officers had been assisting the Parish Council with comments and advice and had commissioned a Strategic Environmental Assessment and Habitats Regulation Assessment required as part of the process.

It was reported that some of the key policies and proposals in the emerging Alresford Neighbourhood Plan included new open spaces; additional protection for existing open spaces; the identification of important non-designated heritage assets; encouragement of developments of new housing for older people; and additional policy requirements aimed at incorporating wildlife into new development.

Members were advised that the Parish Council was now considering the comments received as part of the consultation exercise in order to determine whether any further changes to the Neighbourhood Plan were required.

It was further reported that the next step for Alresford was for the Parish Council to formally submit the revised draft Neighbourhood Plan to the District Council so that Officers could check that it complied with all relevant legislation. If it did, this Council would then hold a formal consultation exercise and appoint an independent Inspector to undertake an examination-in-public.

Having duly considered and discussed the contents of the report:-

It was moved by Councillor G V Guglielmi, seconded by Councillor Turner and:-

**RESOLVED** (a) that the application from Ardleigh Parish Council to designate the whole of the Ardleigh Parish as a Neighbourhood Development Plan Area (NDPA) be noted and that that designation be approved.

It was then moved by Councillor G V Guglielmi, seconded by Councillor Turner and:-

**RESOLVED** (b) that the progress of the Alresford Neighbourhood Development Plan be noted.

The meeting was declared closed at 2.20 pm

**Chairman**

# *Tendring* **District Council**



## **PUBLIC SPEAKING SCHEME – PLANNING POLICY & LOCAL PLAN COMMITTEE**

**JANUARY 2016**

### **GENERAL**

The Public Speaking Scheme (“the Scheme”) is made pursuant to Council Procedure Rule 39 and gives the opportunity for a member of the public and other interested parties/stakeholders to speak to the Council’s elected members on the Planning Policy & Local Plan Committee on any specific agenda item to be considered at that public meeting.

The Scheme covers both questions and statements to the Committee on a particular agenda item. Any individual wishing to speak must contact Committee Services (see details below).

### **NOTICE OF QUESTION**

If an individual wishes to ask a question, at the Planning Policy & Local Plan Committee meeting, prior notification of that question must be received. The principle is to provide the Chairman (or an Officer, if the Chairman decides appropriate) the ability to fully answer questions, which have been received in advance.

**Notice of a question is received by delivering it in writing or by email to Committee Services on [democraticservices@tendringdc.gov.uk](mailto:democraticservices@tendringdc.gov.uk), by midday on Friday 10 July 2020.**

At the meeting, you will be given an opportunity to read out your question to the Committee and an answer will be provided. Supplementary questions are not permitted and there is no debate by the Committee at this stage.

### **STATEMENTS**

Advance notification of the content of a statement on specific agenda items is not required, but to assist the running of the agenda, notification of wishing to speak should

be given prior to the meeting. Please contact Committee Services (email [democraticservices@tendringdc.gov.uk](mailto:democraticservices@tendringdc.gov.uk) or telephone 01255 686584).

## **NUMBER AND TIMING OF QUESTIONS**

At any Planning Policy & Local Plan Committee meeting an individual is limited to asking one question **or** making a statement per agenda item. On each agenda item, no public speaker may speak for longer than three minutes.

Consistent with the Council Procedure Rules, the time allocated for receiving and disposing of questions shall be a maximum 45 minutes. Any question not disposed of at the end of this time shall be the subject of a written response, and published with the minutes of the meeting.

## **SCOPE OF STATEMENTS OR QUESTIONS**

**Please be straightforward and concise and keep your comments to the content of the agenda item. Please be courteous and do not make personal remarks. You may wish to come to the meeting with a written statement of exactly what you wish to say or read out, having checked beforehand that it will not overrun the three minutes allowed.**

Any question or statement which is not directly related to an agenda item for that meeting of the Committee will be rejected. For questions, any rejection will be communicated in advance of the meeting by Officers, and for statements made at the meeting, this will be confirmed by the Chairman.

The Council also reserves its right to reject questions or statements if in its opinion the content is defamatory, frivolous or offensive or requires the disclosure of confidential or exempt information.

## **PLANNING POLICY & LOCAL PLAN COMMITTEE MEMBERS & POINTS OF CLARIFICATION**

No public speaker can be questioned by the Committee however, through the Chairman, relevant points of clarification arising out of the public speaking can be requested at the specific agenda item, before the debate commences. Points of clarification can be given by Officers, with the Chairman's permission.

## **WHO DO I CONTACT FOR MORE INFORMATION**

The Council's website will help you access documents (web: [www.tendringdc.gov.uk](http://www.tendringdc.gov.uk))

If you have a query with regard to public speaking, or wish to register to speak, please email [democraticservices@tendringdc.gov.uk](mailto:democraticservices@tendringdc.gov.uk) or telephone 01255 686584.

If your query is in relation to the Local Plan, please contact:

Tendring District Council, Planning Services, Council Offices Thorpe Road, Weeley,  
Essex CO16 9AJ Tel: 01255 686177 email: [planning.policy@tendringdc.gov.uk](mailto:planning.policy@tendringdc.gov.uk)

**Monitoring Officer, Tendring District Council, in consultation with Head of  
Planning and Chairman of the Planning Policy & Local Plan Committee**

**(Council Procedure Rule 39)**

**(January 2016)**

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## PLANNING POLICY AND LOCAL PLAN COMMITTEE

15 JULY 2020

### REPORT OF THE CORPORATE DIRECTOR: PLACE AND ECONOMY

#### A.1 – SECTION 1 LOCAL PLAN: PLANNING INSPECTOR’S POST-HEARING LETTER

(Report prepared by Gary Guiver and Lisa Hastings)

#### PART 1 – KEY INFORMATION

##### PURPOSE OF THE REPORT

- a) To report the findings of the Local Plan Inspector as to the legal compliance and ‘soundness’ of the Section 1 Local Plan for North Essex following the further examination hearings of January 2020 and receipt of his latest letter dated 15 May 2020.
- b) To note the next steps of the plan-making process required to make the plan ‘sound’ including consultation on the Local Plan Inspector’s recommended ‘modifications’; and
- c) To highlight any implications of the Inspector’s findings for the content and next steps for progressing both the Section 2 Local Plan which contains planning policies and proposals specific to Tendring and the ‘Development Plan Document’ (DPD) which will set out more detailed parameters for the Tendring Colchester Borders Garden Community.

##### EXECUTIVE SUMMARY

###### Key Points

- Following further examination hearings in January 2020, the Planning Inspector has issued a further ‘post-hearing letter’ to the North Essex Authorities on the shared Section of the Braintree, Colchester and Tendring Local Plans.
- The Inspector has concluded that two of the three proposed Garden Communities (the Colchester Braintree Borders Garden Community and West of Braintree Garden Community) are not viable or deliverable and therefore the Section 1 Local Plan, in its current form, is not sound.
- The Inspector has however agreed that the Tendring Colchester Borders Garden Community is viable and deliverable and the housing and revised employment targets in the Local Plan are also sound, including the requirement of 550 homes a year in Tendring.

- In the event that a Local Plan is found not to be sound, the Inspector must, if asked to do so by the local planning authority, recommend modifications to the Local Plan that would make it sound. The Council requested this through its previous decisions.
- The Inspector has given the North Essex Authorities two options for how to proceed: 1) to consult on the main modifications to remove the Colchester Braintree Borders and West of Braintree Garden Communities from the Local Plan and other necessary 'modifications'; or 2) withdraw the plan.
- To continue with the Draft Local Plan the first option of consulting on the main modifications suggested must be undertaken, otherwise the alternative position is that the Plan is withdrawn from examination and the Council will be required to start again. All three of the North Essex Authorities (Tendring, Braintree and Colchester) will need to come to the same conclusion.

### Background

Section 1 of the submitted Local Plan ('the Section 1 Plan') set out an overarching strategy for future growth across Braintree, Colchester and Tendring – the 'North Essex Authorities' ('NEAs'). As well as including policies setting the overall housing and employment requirements for North Essex up to 2033, the Section 1 Plan proposed three new cross-boundary 'Garden Communities' along the A120 corridor with the potential for longer-term and comprehensively-planned growth. In contrast, 'the Section 2 Plan' for each of the three authorities contains more specific local policies and proposals relevant only to their individual area. 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).

Examination hearings for the Section 1 Plan first took place between January and May 2018; and in June 2018 the Inspector wrote to the North Essex Authorities highlighting concerns about the evidence and justification in support of the three Garden Communities. In response to the 2018 letter, the NEAs confirmed their commitment to, and would continue to promote, Garden Communities as part of a long-term strategy for growth and would therefore undertake further work on the evidence base, including an Additional Sustainability Appraisal, aimed at satisfying the Inspector's concerns.

A significant number of technical documents were prepared and later considered and endorsed by the NEAs, including at meeting of this Council's Planning Policy and Local Plan Committee on 16<sup>th</sup> June 2019. The documents were then published for six weeks consultation before being submitted to the Inspector who then held a number of further examination hearings in January 2020 aimed at examining and scrutinising the new evidence to enable him to reach some final conclusions on the legal compliance and soundness of the Section 1 Plan.

## Findings

On 15 May 2020, the NEAs received a letter from the Inspector setting out his findings. The Inspector has concluded that, in its current form, the Section 1 Local Plan does not meet the government's tests of soundness. In particular, two of the three proposed Garden Communities have not been demonstrated to be economically viable or deliverable – thus making the overall plan unsound.

In coming to that conclusion, the Inspector has determined that the Councils have been too optimistic in their assumptions about 1) the rate of housebuilding that could be achieved on an annual basis at each of the Garden Communities; and 2) the costs of delivering a Rapid Transit System (RTS) linking all three Garden Communities to existing towns. These factors combined have led the Inspector to conclude that both the proposed Colchester Braintree Borders Garden Community (at Marks Tey) and the West of Braintree Garden Community (near Rayne) are not likely to be economically viable or deliverable.

The Tendring Colchester Borders Garden Community (between Elmstead Market and Colchester) is however smaller; its delivery is less dependent on achieving very high rates of housebuilding on an annual basis; and Essex County Council has secured £99million of Housing Infrastructure (HIF) Funding to deliver the necessary A120/A133 link road and Rapid Transit System (RTS) linking the Garden Community to Colchester. The Inspector has therefore concluded that the Tendring Colchester Borders Garden Community ("TCB") is viable, deliverable and sound and could realistically deliver around 2,000 (of a total 7,000-9,000) homes between now and 2033.

Notwithstanding his rejection of two of the three Garden Communities, the Inspector has advised that the Councils have properly followed the relevant legal and procedural requirements and that the housing and revised employment targets set out in the plan (including Tendring's requirement of 550 homes a year) are sound. He has also endorsed the Councils' approach to mitigating impacts of development on internationally important wildlife sites through the 'Recreational disturbance Avoidance Mitigation Strategy' (RAMS).

## Options for how to proceed

Whilst the Inspector has found the plan to be unsound in its current form, he has advised that the plan has the potential to be 'made sound' and that it could still progress to adoption if the Councils agreed to remove the Colchester Braintree Borders and West of Braintree Garden Communities and consulted the public and other interested parties on this 'main modification', along with other main modifications to the plan recommended by the Inspector.

The alternative to the above would be to withdraw the Local Plan from the examination – effectively requiring all three Councils to start their plans again from scratch.

To proceed with the current Local Plan, 'Option 1' - the option of removing two of the three Garden Communities from the plan and undertaking consultation on this, amongst other, main modifications

is required to make the plan sound. Colchester Borough Council and Braintree District Council are receiving the same conclusion within their reports.

### Proposed Modifications

Officers have also received draft details of the 'main modifications' to the Section 1 Local Plan the Inspector is likely to recommend – the majority of which take on board the suggested amendments that the Committee considered and agreed for consultation in 2019. The most notable of the additional modifications being indicated by the Inspector are those that remove the West of Braintree and Colchester Braintree Borders Garden Communities from the policies and associated maps and diagrams in the Section 1 Local Plan and any other references to those developments in the text of the plan.

Other main modifications include a new policy on 'Recreation disturbance Avoidance and Mitigation Strategy' (RAMS) and amendments to Policy SP4 'Providing for Employment' to update the employment land requirements for each of the three Councils to reflect the latest evidence, including the requirement for Tendring for between 12 and 20 hectares of new employment land in the plan period to 2033.

The full schedule of draft main modifications is attached as Appendix 2 and a more detailed summary is included in Part 3 of this report. If the three authorities agree to proceed with the current Local Plan process, Officers will make a formal request to the Inspector to issue his finalised schedule of main modifications.

### Implications for the Section 2 Local Plan and Garden Community DPD

Importantly, for Tendring, the Inspector has concluded that the Tendring Colchester Borders Garden Community is sound and can reasonably be expected to deliver around 2,000 homes up to 2033 (of which around 1,000 i.e. half would contribute towards meeting Tendring's housing requirements). He has also re-confirmed the soundness of Tendring's objectively assessed housing requirement of 550 dwellings per annum. Assuming that all three Councils agree to undertake public consultation on the necessary modifications to the Section 1 Local Plan (rather than withdrawing it from the examination), there should be no need to find any additional sites for housing for inclusion in Tendring's Section 2 Plan. (Members will recall from the reports to the last meeting of the Planning Policy and Local Plan Committee on 8<sup>th</sup> June 2020 that Tendring's Section 2 Local Plan 'over-allocates' by around 1,600 homes).

The Inspector has also raised no issues with Tendring's employment land requirement being within the range of 12 and 20 hectares up to 2033 with a potential additional 25ha hectares of employment land to be provided as part of the Tendring Colchester Borders Garden Community.

Confirmation of the soundness of the Tendring Colchester Borders Garden Community should also allow Tendring District Council and Colchester Borough Council to progress the work required for the

preparation of a 'Development Plan Document' (DPD) setting out more detailed parameters for the Garden Community (see separate Report A2).

The implications of the Inspector's findings on the future role of 'North Essex Garden Communities' (NEGC) as a delivery vehicle for Garden Communities (given that only one of the three developments can now proceed) will be the subject of separate reports to Cabinet in due course.

### Next steps

Subject to agreement by the authorities, Officers will respond to the Planning Inspector to confirm that the North Essex Authorities (NEAs) will proceed with the removal, from the Section 1 Plan, of the Colchester Braintree Borders and West of Braintree Garden Communities and wish to proceed with the examination of the Local Plan by undertaking public consultation on his main modification along with other main modifications recommended by the Inspector. The Inspector will be asked to formally issue his finalised schedule of main modifications and to advise the NEAs on the programme and timescales for the remainder of the examination.

The next stage would then be for the Councils to publish the main modifications for six-weeks consultation. Consultants LUC are preparing an update to both the Sustainability Appraisal (SA) and the Habitats Regulation Assessment (HRA) to assess the socio-economic and environmental impacts of the Section 1 Local Plan with the Inspector's recommended main modifications and these documents will be published for consultation alongside the modifications. Any comments received will be submitted to the Inspector for his consideration before coming to a final decision on whether or not the Section 1 Plan, with those modifications, is sound and can be formally adopted. It is proposed that, subject to the Inspector's agreement and completion of the SA and HRA work, the consultation will take place in August and September 2020.

In the meantime, Officers will continue work to prepare for the examination of the Section 2 Local Plan and the preparation of the Tendring Colchester Borders Garden Community DPD. Once the three authorities have come to a decision on how to progress with the Section 1 Local Plan, the Planning Inspectorate will advise the Councils on the likely timetables for the Section 2 examinations.

## **RECOMMENDATION**

**That the Planning Policy and Local Plan Committee:**

- a) notes the findings of the Planning Inspector's letter dated 15 May 2020 (attached as Appendix 1 to this report) and his recommended modifications (attached as Appendix 2);**
- b) following the agreement with the Leader of the Council, agrees to proceed with the Inspector's suggested main modifications to remove both the Colchester Braintree Garden Community and the West of Braintree Garden Community from the Section 1 Local Plan for the purposes of soundness;**

- c) subject to the views of the other North Essex Authorities (Colchester Borough Council and Braintree District Council), authorises the Assistant Director for Strategic Planning and Place to notify the Planning Inspector of the intention to continue with the present Local Plan process, formally request his finalised schedule of recommended main modifications for soundness and establish the timescales for the consultation exercise and subsequent stages in the process;
- d) notes that public consultation will be undertaken on all 'main modifications' recommended by the Planning Inspector to make the Local Plan sound (as set out in draft in Appendix 2); and
- e) notes that an update to the Sustainability Appraisal (SA) and the Habitat Regulations Assessment (HRA) for the Modified Section 1 Local Plan will need to be produced and published for consultation alongside the Inspector's main modifications and that consultants LUC are already instructed to undertake this work.

## **PART 2 – IMPLICATIONS OF THE DECISION**

### **DELIVERING PRIORITIES**

The preparation of a new Local Plan is a high priority for all three of the North Essex Authorities. It is also the goal of government for local planning authorities to deliver sustainable development and coordinated provision of housing, jobs and infrastructure whilst best protecting and enhancing the natural and built environment. The North Essex Authorities and Essex County Council were working together to deliver a coordinated approach which promotes the creation of three new 'garden communities' crossing district borders. Following the Inspector's findings, the focus will shift to the delivery of just one Garden Community at the Tendring/Colchester Border.

### **RESOURCES AND RISK**

The examination of Section 1 of the Local Plan has been funded jointly by the North Essex Authorities through their respective LDF/Local Plan budgets. 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. If however they do, there is a risk of further delay to the examination process for Section 2 of the Local Plan.

There is also a risk of legal challenge following the adoption of the Local Plan if any party believes that the Inspector or the Councils have made any legal or procedural errors. This risk has however been minimised with the Inspector taking particular care to thoroughly examine legal and procedural matters, twice, as part of the examination process. With the Inspector recommending the removal of the Colchester Braintree Borders Garden Community and the West of Braintree Garden Community from the Section 1 Local Plan, a legal challenge is now more likely to come from aggrieved landowners and developers that had been promoting those schemes, as opposed to local campaign

groups or residents – but any party has the right to apply for a legal challenge if they so wish. There are no obvious grounds that would justify such a challenge.

The Inspector has now given clear advice on the how the Section 1 Plan ought to be modified in order to meet the government’s tests of soundness and for the Councils to proceed to the next stages of the plan-making process. If however for any reason a Councils wishes abandon or withdraw the plan, either at this stage or at any time before the plan reaches the time for formal adoption, it will have implications for the other two. It would be likely to require the authorities to begin the plan-making process again, either jointly, in partnership or individually. Whilst some of the technical evidence prepared to date could be used to inform the preparation of a new plan(s), the majority of evidence base documents would need to be revised and the plan itself would have to follow a different format to reflect the requirements of the new NPPF that was published in 2018 and updated in 2019. To meet with legal and procedural requirements, the three-stage plan-making process would need to start from scratch – at considerable cost to the tax payer, with the first stage being consultation on issues and options.

Section 1 of the Local Plan was individually submitted by the North Essex Authorities but applies equally to all three Councils, therefore for the current plan to proceed, each authority should agree to remove the Colchester Braintree Borders and West of Braintree Borders Garden Communities from the plan in line with the Inspector’s findings. Should either Braintree District or Colchester Borough Councils postpone or make an alternative decision, Members at Tendring will need to consider their position. The outcome of the Local Plan Committees for Braintree and Colchester, and any resulting implications, will be reported to Members as appropriate.

Whilst the Inspector has re-confirmed that the 550 homes a year figure in the Section 1 Plan is sound, he does say in paragraph 272 of his letter that, if the NEAs decide to his recommended first option of removing two of the three Garden Communities from the plan and consulting on modifications *“if the official 2018-based household projections are published while the examination is still in progress, consideration will need to be given to any implications the projections may have for the soundness of the housing requirement figures in the Plan”*. This means that although the authorities are in fairly strong position with the Inspector having endorsed the housing figures, there still may need to be further discussion on the matter before the Inspector comes to his final conclusions.

## **LEGAL**

The planning legislation and the National Planning Policy Framework (NPPF) (both the 2012 version applicable to this Local Plan and the new 2019 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.

Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 (as amended) state that applications for planning permission must be determined in accordance with the 'development plan' unless material considerations indicate otherwise. The statutory 'development plan' for Tendring, as it stands is the 2007 Adopted Local Plan. However, the policies and proposals in the Adopted Local Plan are increasingly out of date. 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 emerging Local Plan through the remaining stages of the plan making process and ensure it meets the requirements of national planning policy so it can become the new statutory development plan and be relied upon by the Council acting as the Local Planning Authority.

Section 33A of the Planning and Compulsory Purchase Act 2004, as amended ("2004 Act") places 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. Before a Planning Inspector can begin the process of examining a Local Plan, they need to be satisfied that the local authority has demonstrated it has done everything it can to ensure effective cooperation with neighbouring authorities and other partner organisations and has sought to resolve, as far as is possible, any cross-boundary planning issues. In his letter, the Inspector has confirmed that the relevant authorities have, to date, met with this legal duty.

The Town and Country Planning (Local Planning)(England) Regulations 2012 make provision for the operation of the local development planning system including, for the purposes of this report, regulations relating to the preparation, publication and representations relating to a local plan and the independent examination.

Section 19 of the 2004 Act requires 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. More generally, section 39 of the Act requires that the authority preparing a Local Plan must do so "with the objective of contributing to the achievement of sustainable development". The purpose of a Sustainability Appraisal is to ensure that potential environmental effects are given full consideration alongside social and economic issues.

Section 20(7C) of the 2004 Act provides that the Inspector 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. The NEA Councils have previously made this decision prior to the initial submission and again in preparation for the last examination however, it is recommended that it is repeated at this stage to give the Inspector maximum assurance that the Council's request is up to date based on the contents of his letter in May 2020. If the authorities agree to consult on the Inspector's recommended modifications, it is proposed that the Inspector is

asked to recommend any specific further modifications that might or might not be required in response to further any representations received as part of the consultation exercise.

If the North Essex Authorities (NEAs) agree to proceed with modifications to the Section 1 Plan, along the lines advised by the Inspector, a further Sustainability Appraisal of the modified plan will need to be undertaken and published for consultation alongside the modifications. Consultants LUC have been instructed to carry out this work along with an update to the Habitat Regulations Assessment (HRA).

The NPPF requires 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. The Inspector has confirmed that legal and procedural requirements have been met but that the Section 1 Local Plan, in its current form, is not sound. The Inspector has indicated that the Section 1 Local Plan could be made sound through modifications, which would have to include the removal of the Colchester Braintree Borders and West of Braintree Garden Community. These modifications and the others recommended by the Inspector need be published for consultation in their own right before the Council could proceed to the adoption of Section 1 and the examination of Section 2.

The terms of reference of the Planning Policy and Local Plan Committee includes the exercise of the Council’s functions, powers and duties in relation to the preparation of the District Council’s Local Plan, including ensuring that it meets the “tests of soundness” set out in the NPPF. This report does not require any recommendations to Full Council, which will be required at the next stage of the process once the Planning Inspector’s report is received for final adoption of Section 1.

It is necessary to seek the agreement of the Leader of the Council to the proposed approach due to the strategic nature of the suggested main modifications and as Portfolio Holder for strategic planning. The Leader of the Council has confirmed that he agrees with proceeding with the proposals set out for the purposes of soundness.

## **OTHER IMPLICATIONS**

**Area or Ward affected:** All wards (although the land proposed for a Garden Community crossing the Tendring/Colchester Border falls mainly within the new Alresford and Elmstead ward and the Ardleigh and Little Bromley ward).

**Consultation/Public Engagement:** If the North Essex Authorities (NEAs) all agree to proceed with modifications to the Section 1 Local Plan, along the lines indicated by the Planning Inspector (including the removal of the Colchester Braintree Borders and West of Braintree Garden Communities), those main modifications would need to be the subject of six-weeks public

consultation in their own right to invite any final comments before the Inspector can come to a final decision on the soundness of the plan.

The consultation will be confined to the recommended modifications and comments on other elements of the plan not recommended for modification (and which are therefore presumed to be sound) will not be invited. The updated Sustainability Appraisal (SA) and Habitats Regulation Assessment (HRA) will however be published alongside the modifications and comments on those documents will be invited. It is proposed, subject to the Inspector's agreement and completion of the SA and HRA work, that the consultation exercise will run between August and September 2020 with the relevant documents being published on the Braintree District Council website (with links from the Tendring and Colchester websites) with hard copies made available to view at Council Offices and public libraries subject to their opening hours and arrangements in light of the coronavirus COVID-19 pandemic. Consultees and on the Councils' respective databases will be notified and there will be publicity via a number of media channels. The nature of the consultation exercise will not necessitate any public meetings, exhibitions or other face to face events.

Following the consultation the NEAs would process all representations received and submit them (alongside the documents subject to the consultation) to the Inspector's Programme Officer in a similar fashion to which followed the Regulation 19 Submission consultation in 2017 and the technical consultation in 2019.

## **PART 3 – SUPPORTING INFORMATION**

### **Background**

Section 1 of the emerging Local Plan ('the Section 1 Plan') currently sets out an overarching strategy for future growth across Braintree, Colchester and Tendring – the 'North Essex Authorities' ('NEAs'). As well as including policies setting the overall housing and employment requirements for North Essex up to 2033, the Section 1 Plan proposes three new cross-boundary 'Garden Communities' along the A120 corridor. In contrast, 'the Section 2 Plan' for each of the three authorities contains more specific local policies and proposals relevant only to their individual area.

The three Garden Communities proposed in the Section 1 Plan are:

- Tendring/Colchester Borders Garden Community (Policy SP8) – 7,000-9,000 homes on land between Elmstead Market and Colchester.
- Colchester/Braintree Borders Garden Community (Policy SP9) – 15,000 to 24,000 homes on land around Marks Tey.

- West of Braintree Garden Community (Policy SP10) – 7,000 to 10,000 homes on land north of the A120 west of Rayne.

These are long-term comprehensively-planned development proposals designed to follow ‘Garden Community Principles’ including pro-active collaboration between the public and private sectors, community empowerment and engagement, high quality design and management of the built and public realm, integration of infrastructure and development and long-term governance and stewardship arrangements. The developments are expected to take place partly within the timescale of the Local Plan (to 2033) but mostly beyond that period. The Section 1 Plan originally envisaged that each of the three Garden Communities will deliver 2,500 new homes in the plan period up to 2033; i.e. 7,500 homes across North Essex. The majority of new housing development expected in the period between now and 2033 will still however come from sites that are already under construction or have already obtained planning permission and sites that are allocated for housing development in each of the authorities’ Section 2 Local Plans.

The final part of the process for the preparation of a Local Plan, before it can be formally adopted, is the examination. The purpose of the examination is for a government-appointed Planning Inspector to ensure the Council has followed relevant legal and procedural requirements and to test the plan for its ‘soundness’ which includes ensuring that it is consistency with national planning policy. Key legal tests include ensuring the Council has complied with the legal duty to cooperate, the requirements for sustainability appraisal and requirements for community consultation.

In October 2017, the North Essex Authorities submitted their Local Plans to the Secretary of State to begin the formal process of examination. The Secretary of State then appointed an experienced Planning Inspector, Mr. Roger Clews, to undertake the examination for Section 1 of the plan.

Following the original examination hearings that took place in 2018, the Councils received three letters from the Local Plan Inspector containing interim feedback on the soundness and legal compliance of the Section 1 Local Plan. The first letter dated 8<sup>th</sup> June 2018 set out the Inspector’s initial findings mainly in respect of legal compliance and the soundness of the Garden Community proposals. The second letter dated 27<sup>th</sup> June 2018 set out the Inspector’s findings in respect of the need for new homes. The third letter dated 2<sup>nd</sup> August 2018 contained the Inspector’s response to questions of clarification raised by the NEAs in respect of the Inspector’s first letter. The content of these letters were all reported to Members in 2018.

Overall, the Inspector was satisfied in 2018 that the authorities had complied with the legal duty to cooperate and other legal and procedural matters and was also satisfied that the overarching employment and housing targets in the plan had been justified on the basis sound evidence. He also 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 provided to support the Garden Communities was lacking in a number of respects. The main areas of concern related to:

- Transport infrastructure – in particular the lack of certainty over its practical delivery, timing, costs and funding;
- Housing delivery – in particular the assumptions about how many new homes could realistically be built at the Garden Communities in the period up to 2033;
- Employment provision – the lack of any indication as to how much employment land would be provided as part of the new Garden Communities;
- Viability – in particular some of the assumption made in respect of transport infrastructure costs, land purchase and interest costs and contingency allowances.
- Delivery mechanisms - questions over the NEAs approach to delivering Garden Communities through the formation of a locally-led ‘development corporation’ and whether the development could be delivered through other alternative methods.
- Sustainability appraisal – in particular the objectivity of the appraisal and concerns that it was biased in favour of the NEA’s preferred strategy.

In summary, the Inspector identified a number of key issues about the viability and deliverability of the Garden Community proposals and the way in which the authorities had selected the option of Garden Communities over other reasonable alternatives. Because of this, he was unable to endorse the Section 1 Local Plan as being sound. Instead, the Inspector provided the authorities with three options for how to progress a Local Plan towards adoption.

Option 1 would have involved removing Garden Communities from the Local Plan and proceeding with the examination of Section 2, so long as the Local Plan was reviewed again within 2-3 years (at which point the evidence in support of Garden Communities might have been stronger). Option 2 effectively meant undertaking more work to fill the gaps in the evidence and delaying the examination of Section 2 until the Inspector had been satisfied that the Garden Communities were deliverable and that Section 1 of the Plan was sound. Option 3 would have meant withdrawing the Local Plan and starting again.

On 22<sup>nd</sup> October 2018, the NEAs wrote to the Inspector to advise him that the Councils remained committed to using Garden Communities principles to secure the future housing requirements in the North Essex Authorities area and would provide the further evidence requested by the Inspector including evidence on:

- the availability of funding for the necessary strategic infrastructure;
- the financial viability of the proposed communities;
- the environmental effects, including transport issues;
- employment provision within the Communities (and elsewhere) to ensure housing growth is matched with economic growth; and
- continuing engagement with the local communities.

The Councils also committed to reviewing the ‘Sustainability Appraisal’ underpinning the choice of strategy in the Local Plan, ensuring that it considered a full range of reasonable alternatives to the

Garden Communities, at a range of different sizes. Importantly, the Councils committed to reviewing all of the above evidence before submitting it to the Inspector and before any further consultation – to see whether any changes to the plan or the overall strategy were necessary.

Following this decision, the Councils worked together, and with expert consultants, to prepare a series of technical documents including an Additional Sustainability Appraisal (SA), evidence base documents and studies covering a range of topics that required further analysis and a series of suggested amendments to the Section 1 Plan. The list of further documents was as follows:

1. Additional Sustainability Appraisal of North Essex Local Plan Section 1;
2. North Essex Rapid Transit System for North Essex: From vision to plan;
3. Mode Share Strategy for the North Essex Garden Communities;
4. Build Out Rates in the Garden Communities;
5. North Essex Local Plans (Section 1) Viability Assessment Update;
6. Employment Provision for the North Essex Garden Communities;
7. North Essex Garden Communities Infrastructure Planning, Phasing and Delivery;
8. North Essex Authorities Infrastructure Order of Cost Estimate (41,000 homes);
9. HRA [Habitat Regulation Assessment] Report for North Essex Authorities Shared Strategic Section 1 Local Plan;
10. North Essex Authorities' Position Statement on Delivery Mechanisms';
11. North Essex Authorities' Position Statement on State Aid; and
12. Proposed amendments to the Publication Draft Braintree, Colchester and Tendring Local Plans: Section One.

These documents were endorsed by Members of all three Council's in June and July 2019 and were subsequently published for consultation for six-weeks between 19 August 2019 and 30 September 2019 to allow third parties the opportunity to consider both the suggested amendments and evidence and make any comments.

## **Further Examination Hearings**

Following the consultation, all of the representations (approximately 1,000 in total) were forwarded to the Inspector. Having considered the comments, the Inspector set the timetable for the resumption of examination hearings and published a set of 'Matters, Issues and Questions' (MIQs) identifying the main topics or 'matters' that the Inspector wished to discuss, with a series of questions under each matter. The NEAs and other participants in the examination (i.e. those who made representations) were invited to prepare and submit 'hearing statements' that responded, in writing, to the Inspector's questions. Officers from the NEAs worked together, with expert consultants where necessary, to produce the hearing statements that respond to all of the Inspector's questions.

The further hearing sessions took place in January 2020 at Colchester Community Stadium and covered the following matters:

### Day 1: Tuesday 14<sup>th</sup> January 2020

- Matter 1: Habitats Regulations Assessment.
- Matter 2: Employment provision for the proposed garden communities.
- Matter 3: Housing need.

### Day 2: Wednesday 15<sup>th</sup> January 2020

- Matter 4: Build Out Rates
- Matter 5: Delivery mechanisms and State aid.

### Day 3: Thursday 16<sup>th</sup> January 2020

- Matter 6: Transport and infrastructure.

### Day 4: Tuesday 21<sup>st</sup> January 2020

- Viability technical seminar (a special round-table session aimed at helping the Inspector understand all of the highly technical evidence that had been submitted by the NEAs and third parties).

### Day 5: Wednesday 22<sup>nd</sup> January 2020

- Matter 7: Viability.

### Day 6: Thursday 23<sup>rd</sup> January 2020

- Matter 8: Sustainability Appraisal.

### Day 7: Thursday 30<sup>th</sup> January 2020

- Matter 9: Suggested amendments to the Section 1 Plan.

At each session, the North Essex Authorities were represented by a lead Officer, supported by either Michael Bedford QC or Robert Williams of Counsel with specialist consultants where necessary. Most sessions were also attended by representatives of CAUSE (the Campaign Against Urban Sprawl in Essex), Wivenhoe Town Council, the Wivenhoe Society, developers with either in an interest in the Garden Communities or promoting alternative sites (some of whom were represented by Barristers) and other residents, community groups or technical specialists specifically invited by the Inspector.

The sessions were generally well attended by the public and other interested parties and the Chairman of the Planning Policy and Local Plan Committee was present on most days. The topics that attracted the most public interest were transport and the Sustainability Appraisal. The discussion on each of the days ran smoothly and the team of Officers and experts assembled by the North Essex Authorities were able to answer all of the Inspector's questions and respond to points raised by third parties, either at the sessions themselves or subsequently in writing, as and when requested by the Inspector.

On the final day of the hearing sessions on 30<sup>th</sup> January the Inspector, in his closing remarks, explained the next stages of the process. He explained that, because the examination had already gone on for two years, he was keen to bring this stage of the process to a close and that he would write to the North Essex Authorities 'in a few weeks' to give his final view on the soundness of the Section 1 Local Plan and would not be inviting any further work which might delay the process further.

That said, the NEAs were able to update the Inspector, in writing, on the positive announcements in the Budget which included confirmation of £275million Housing Infrastructure (HIF) funding for the re-alignment of the A12 at Marks Tey and the inclusion, in the future programme of investment, the re-routed A120 following Essex County Council's preferred route between Kelvedon and Braintree. This follows from last year's confirmation of £99million of HIF funding for the A120/A133 link road and Rapid Transport System (RTS) to help deliver the Tendring Colchester Borders Garden Community.

### **Inspector's May 2020 Findings**

On 15 May 2020, the lead Officers for the NEAs received the Inspector's letter setting out his further post-examination conclusions. Key conclusions from the Inspector's letter (attached as Appendix 1) are set out below, with references to relevant statements paragraphs.

#### **Principle of Garden Communities**

The Inspector recognises in (para 13) that *"the Plan's policies for the GCs [Garden Communities] are consistent with the NPPF's guidance on the way in which sustainable development can be achieved through the development of garden communities."* The principle of promoted Garden Communities as part of the Local Plan is therefore confirmed as acceptable.

#### **Legal compliance**

The Inspector has re-confirmed (para 21) that the NEAs have met the duty-top-cooperate in the preparation of the Section 1 Local Plan as well as the relevant procedural requirements with regard to consultation and submission.

## Housing requirements

The Inspector has also re-confirmed that the housing requirements set out in Policy SP3 of the Plan (which include the requirement of 550 homes a year for Tendring) are still based on sound evidence. He states (para 47) *“I conclude that neither the population and household projections and employment forecasts published since June 2018 nor recent evidence from market signals indicate that there have been a meaningful change in the housing situation”* and *“Consequently, the Plan’s housing requirement figures remain soundly based”*.

## Habitats Regulation Assessment/RAMS

A judgement of the Court of Justice of the European Union in relation to the European Habitat Regulations required the NEAs to produce an update to the Habitats Regulation Assessment (HRA) for the Section 1 Local Plan. It also led the Councils, with agreement from Natural England, to put forward to the Inspector a number of suggested amendments to the wording of the Plan to ensure it complied with legal requirements arising from the judgement.

The suggested amendments included a new policy embracing the Essex Coast ‘Recreational disturbance Avoidance Mitigation Strategy’ (RAMS) as a means by which the Councils will meet with their legal requirements in considering, and where necessary mitigating, the direct and indirect impacts on internationally important wildlife sites (European Sites) arising from ‘recreational disturbance’ i.e. that arising as a result of increasing housebuilding and population growth.

The Inspector has concluded that the addition HRA work (undertaken by consultants LUC) has (para 56) *“adequately assessed the likelihood of significant effects arising from recreational activities, including by identifying appropriate zones of influence based on visitor surveys”*. He then concluded (para 59) *“Taking into account the mitigation measures, which as well as the RAMS include the proposed modifications to the Plan’s policies, the NEAs are satisfied that there is sufficient certainty that the plan would not adversely affect the integrity of any European site, alone or in combination. In the light of the above points, I consider that they are justified in taking that view.”*

The Inspector’s endorsement of RAMS as a means of fulfilling the requirements of the Habitats Regulations is helpful, both for the Local Plan, but also in giving weight to the RAMS Strategy in the determination of planning applications, including the approach to securing developer contributions from all new residential development. More details of RAMS are set out in the Planning Policy and Local Plan Committee report A5.

## Sustainability Appraisal

In his 2018 letter, the Planning Inspector identified a number of shortcomings in the Sustainability Appraisal (SA) for the Section 1 Local Plan which the 2019 further SA sought to address. The Inspector has confirmed that, in undertaking the Additional SA (using consultants LUC) the NEAs have met the statutory requirements for consultation and submission of the relevant reports.

The Inspector has also confirmed that the methodology for, and approach to, the Additional SA was sound. In particular, he has agreed the threshold of 2,000 dwellings as the ‘cut-off’ for ‘strategic sites’ as being *“a reasonable planning judgement”* (para 71); has praised the list of alternative strategic

sites tested as part of the assessment as *“impressively comprehensive”* (para 72); and has concluded, in response to objections from third parties to the NEAs decision to discount certain sites, that *“It may be that others would have made different judgements”...“but nothing I have heard or read indicates that any of the judgements made by the NEAs was unreasonable or irrational”*.

The Inspector also agreed with the ‘seven principles’ that the NEAs applied in determining which sites and which spatial strategy options should carry forward into the final stage of the assessment. He states (para 78) *“As the NEAs correctly note, attempting to assess every possible combination of every site taken forward into Stage 2 would be an unmanageable task. Devising principles to inform the selection of alternative spatial strategies is, therefore a reasonable way to proceed, providing of course that the principles themselves are sound.”* He then goes on to explain why each of the seven principles devised by Officers were reasonable and sound and concludes (para 89) that *“I see no basis on which to conclude that any reasonable alternative was included from the assessment”*.

In the approach to assessing the alternatives, the Inspector described Stage 1 of the assessment (para 90) as *“scrupulously fair”* with *“no sign of bias in favour of or against any of the sites”*. He also responded to concerns raised by Historic England about the lack of a detailed assessment of heritage impacts but concluding that (para 100) *“Historic England’s advice on site allocations in more applicable to the future DPDs [Development Plan Documents for the Garden Communities] than to the Section 1 Plan”* and, even with more detailed evidence, *“it is highly unlikely that the outcome of the Stage 1 assessment would have been any different”* (para 101). The Inspector also responded to concerns raised about the lack of detailed evidence on air quality, concluding that the approach to this issue was adequate at this stage.

Overall, the Inspector has concluded that the approach, methodology and decisions on selecting and discounting options in the Additional Sustainability were sound but that, in coming to a judgement as to the most appropriate and sustainable strategy option for inclusion in the Local Plan, deliverability is a critical issue. He states (para 116) *“deliverability is critical to the justification of the Plan’s spatial strategy, including the proposed GCs”* [Garden Communities].

Later, in the concluding section of his letter, the Inspector acknowledges that whilst the Additional Sustainability Appraisal, in itself, was unable to conclude that any of the spatial strategy options, to the west or east of Colchester was the most sustainable option, the advantage of the strategy in the Section 1 Plan is that it provides clear direction to accommodate strategic growth over many decades to come. He says (para 255): *“For the NEAs, the ability of the proposed GCs to provide for long-term strategic growth is one of the key reasons for pursuing the Section 1 Plan strategy in preference to the alternatives, notwithstanding that some of the alternative options offer opportunities to deliver similar benefits.* He goes on (para 256), *“Consequently, **the Plan’s spatial strategy, which includes the three proposed GCs, would only be justified as the most appropriate strategy if it can be shown that each GC is deliverable, not just over the Plan period but over the long term”***

Deliverability of the proposed Garden Communities

The Inspector's letter contains very detailed consideration of the deliverability of the proposed Garden Communities that considers infrastructure requirements, the funding announced for relevant trunk road improvements, the scale of development that might or might be achievable without such improvements, the practical feasibility and the costs and commercial viability of Rapid Transit Systems (RTS). He also considers the likely rate at which houses can realistically be built at each of the Garden Communities and the likely demand and opportunity to deliver employment land in each of the three locations.

Turning to the details of viability, the Inspector, having considered all the factors above and a range of evidence and appraisals prepared on behalf the NEAs and other third parties, has also addressed various financial considerations including development costs, the realistic cost of financing and acquiring land, rates of contingency to be applied to the cost of major infrastructure schemes, the potential effects of inflations and the cost of borrowing, including the levels of interest that would accrue over the lengthy period of developing a Garden Community.

Without repeating the detail of the Inspector's letter, the main conclusions he has reached can be summarised as follows:

- Critically, the NEAs are being over-optimistic in suggesting that the Garden Communities could achieve rates of development in excess of 300 homes a year in any of the three locations and, despite the evidence put forward to the examination, 250 homes a year is the prudent maximum that should be assumed. This means the developments will take significantly longer than the NEAs are suggesting, which affects the viability of development – particularly in relation to the ongoing cost of borrowing. The viability evidence from various site promoters was given limited weight since it also relied on a higher delivery rate.
- The costs likely to be involved in developing a Rapid Transit System (RTS) are likely to be at the higher end of the different ranges that were discussed at the examination, with a high level of contingency needing to be factored into the calculations. The NEAs have therefore been over-optimistic in thinking the costs could be lower.
- There is insufficient evidence to adequately demonstrate that Route 3 of the RTS between Braintree and Stansted and Route 4 between Braintree and the Colchester Braintree Borders Garden Community can be funded and delivered – meaning an important section of the RTS would be unlikely to happen.
- The award of Housing Infrastructure (HIF) Funding for the A120/A133 link road east of Colchester and the widening and re-routing of the A12 at Marks Tey have been factored into the viability assessments, but a high level of contingency should be applied to the anticipated costs.

Taking all of the above into account to calculate the likely 'residual land value' (RLV) of each scheme (i.e. the amount of money a landowner can reasonably expect to receive in exchange for their land and the main measure of viability), the Inspector has concluded that only one of the three proposed

Garden Communities is economically viable and deliverable – the Tendring Borders Garden Community. The Inspector states (para 233):

*“For the proposed Tendring / Colchester Borders GC, the Grant scenario assessment in the 2019 Supplementary Information, based on average delivery of 250dpa [dwellings per annum] with 40% contingency allowance, gives a residual land value of over £175,000/acre. This is well above the figure that I consider would constitute a competitive return to a willing landowner. This would allow sufficient financial headroom to overcome any concerns about the contingency allowance for the A120/A133 link road, or any additional costs associated with the link road or with RTS Route 1. **I therefore consider that the viability of the Tendring / Colchester Borders GC has been demonstrated.**”*

For the Colchester Braintree Borders Garden Community at Marks Tey however, the Inspector has concluded that the development is not viable and deliverable (para 234):

*“For the Colchester / Braintree Borders GC, on the other hand, the Grant scenario assessment, based on average delivery of 250dpa with a 40% contingency allowance, gives a residual land value of only around £24,500/acre. That is well below what I consider to be a competitive return to a willing landowner.”*

The Inspector’s conclusions on the West of Braintree Garden Community near Rayne are that viability is more marginal:

*“For the West of Braintree GC, the Reference scenario, based on 250dpa with a 40% contingency allowance, produces a residual land value of around £52,000/acre. I consider that this would place the development below, or at best, on the margin of viability.”*

#### Inspector’s conclusions on soundness

The three tests of soundness in the National Planning Policy Framework are the plan are:

- **Positively prepared** – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;
- **Justified** – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;
- **Effective** – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and
- **Consistent with national policy** – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework.

Whilst the Inspector has agreed that the Section 1 Plan has been ‘positively prepared’, his letter identifies continued issues with the viability and deliverability of the proposed Colchester Braintree Borders Garden Community and the West of Braintree Garden Communities which bring into

question the Plan's performance against the requirements to be 'justified', 'effective' and 'consistent with national policy'.

The Inspector's overall conclusions on the soundness of the Section 1 Plan are summed up in paragraphs 257 to 261 as follows:

*157. "Viability appraisal shows that, with an appropriate 40% contingency allowance on transport and utilities infrastructure, the proposed Colchester / Braintree GC would not achieve a viable land price, and that the proposed West of Braintree GC is below, or at best is at the very margin of, financial viability, contrary to advice in the PPG [Planning Practice Guidance]. On this basis, neither GC is deliverable.*

*158. For separate reasons, given in paras 143-151 above, neither RTS Route 3 nor RTS Route 4 has been shown to be deliverable. The proposed West of Braintree GC depends on Route 3 for its public transport links to destinations outside the GC, and on Route 4 for links to places east of Braintree. Without those routes, apart from the few journeys that might be possible on foot or bicycle, the car would be the only realistic choice for travel beyond the GC itself.*

*159. Housing development at the proposed Colchester / Braintree Borders GC is intended to help meet the housing needs of both Colchester borough and Braintree district, and there is a strong commuting relationship between the two local authority areas. Notwithstanding the links to other destinations offered by RTS Route 2 and by rail services from Marks Tey station, the GC would depend on Route 4 for its public transport links westward to Braintree.*

*160. In these circumstances, the fact that RTS Routes 3 and 4 have not been shown to be deliverable is entirely at odds with the Plan's aspirations for integrated and sustainable transport networks. Even if the A120 dualling scheme has a good prospect of being delivered as part of the RIS [Road Investment Strategy] 3 programme, not to provide the necessary public transport connections from these two GCs would directly conflict with the NPPF's advice that the transport system needs to be balanced in favour of sustainable transport modes.*

***161. For the foregoing reasons, therefore, I find that the proposed Colchester / Braintree Borders and West of Braintree GCs are not justified or deliverable. Consequently, the Plan's spatial strategy, and thus the Plan itself as submitted, are unsound."***

In conclusion, the Inspector has found that the Section 1 Local Plan, in its current form, is unsound and could therefore not proceed to adoption without some significant changes.

#### Options for progressing the Local Plan

Although the Inspector has very clearly come to the view that the Section 1 Local Plan, in its current form is unsound because of the viability and deliverability issues at the Colchester Braintree Borders and West of Braintree Garden Community, he goes on in his letter to explain that the Tendring Colchester Borders Garden Community is deliverable and that there could be a way of progressing the Local Plan towards adoption. He states (para 264):

*"Based on the NEAs' current housing trajectory, and taking into account my conclusions on the rate of housing delivery, the Tendring / Colchester Borders GC would deliver over 2,000*

*dwellings during the Plan period. That would make a worthwhile contribution to meeting the Plan's overall housing requirement. Based on the latest housing supply figures, it would represent an over allocation of approximately 5% against the overall requirement. Whether that level of over-allocation is sufficient, and whether the other sources of housing supply will come forward as the NEA expect, are matters to be considered in the Section 2 plan examinations”.*

In essence, the Inspector is saying that even if the Colchester Braintree Borders and the West of Braintree Garden Community do not happen, there is still a reasonable prospect that, on the strength of the Tendring Colchester Borders Garden Community alone, the overall housing requirement will still be met (subject to consideration of the Council's individual Section 2 Plans) and potentially exceeded, by around 5%.

In paragraph 266 of his letter, the Inspector states:

***“I therefore conclude that development of the Tendring / Colchester Borders GC would enable the delivery of sustainable development in accordance with the NPPF's policies. If the unsound Colchester / Braintree Borders and West of Braintree GC proposals are removed from the Plan, the Plan is capable of being made sound.”***

He then (para 267) states:

**“In the light of this conclusion it appears to me that the NEAs have two main options:**

- **To propose and consult on main modifications to remove the Colchester / Braintree Borders and West of Braintree GC proposals from the Plan; or**
- **To withdraw the Plan from examination.**

The Inspector has asked that the North Essex Authorities advise him, as soon as we are able to, which of the options (or any alternative course of action) we wish to pursue. This will then enable a timescale for the remainder of the examination to be developed, should we select the first option.

#### Officer consideration of the options

Officers across all three North Essex Authorities have given careful and urgent consideration to the Inspector's two suggested options in order to make a recommendation to Councillors.

The benefits of 'Option 1' (to remove two Garden Communities from the Plan and consult on this and other modifications) include:

- A clear way forward for the Local Plan that avoids the need to start the plan-making process from scratch under the requirements of the new National Planning Policy Framework, and which ensures all three authorities can progress to the examination of their individual Section 2 Plans.
- The opportunity to 'lock down' the housing and employment figures and move swiftly towards getting a plan in place and thus giving all three authorities an up to date policy framework that will protect their areas from speculative, unwanted and poor quality development.

- The ability for the authorities to review their Local Plan, either on a joint or individual basis within five years of adoption, giving more time for them to consider whether or not to bring forward or re-introduce any strategic development proposals or new Garden Communities to meet longer-term housing and employment needs post 2033. Those reviews would be carried out under the relevant national policy framework and plan-making guidance in place at that time.
- Ensuring that all the investment in time and resources putting together the Local Plan has not been wasted and is still put to good use in enabling a plan to progress.
- This approach is likely to be supported by communities and campaign groups who were in strong opposition to the Garden Communities, such as CAUSE – who were in particularly strong (and effective) in their opposition to the Colchester Braintree Borders Garden Community.

The disadvantages of Option 1 include:

- The removal of two of the three Garden Communities from the Local Plan will no doubt lead to objections, to the modifications, from the landowners and developers who were promoting those schemes and the possibility of legal challenge, if those parties believe there are grounds for such a challenge.
- It leaves the three authorities with fairly marginal over-allocation of housing land which means that housing supply will have to be kept under very close review in the years between adoption of the plan and the first review. The authorities will have to make sure they allocate sufficient land in their Section 2 Local Plans because if any of the authorities find themselves in a position where they cannot demonstrate a five-year housing supply, it could leave them vulnerable to speculative housing applications.

Officers are strongly of the view that the advantages of Option 1 clearly outweigh the disadvantages.

Turning to Option 2 (withdraw the Plan and start again), the advantages are:

- Opportunity for a complete fresh start to the plan making process (jointly or individually), under the guidance in the new version of the NPPF and with the benefit of the Inspectors findings and some of the evidence that has been prepared. Those aggrieved by the Tendring Colchester Borders Garden Community, might see this as advantageous.

The disadvantages of Option 2 include:

- Continuation of the 'policy vacuum' in which Local Plan policies are out of date and the authorities (particularly Braintree and Tendring) remain vulnerable to speculative, unwanted, potentially poor developments and 'planning by appeal' for at least another three years.

- Significant cost, to the tax payer, in having to start the plan making process from scratch, including considerable evidence gathering, consultation exercises – and a waste of much of the work that has already been undertaken.

Officers are strongly of the view that the disadvantages of Option 2 clearly outweigh the benefits.

Officers have also considered whether it would be possible, as an alternative to Options 1 or 2, to either prepare further information to persuade the Inspector that the proposals are sound or lobby the Secretary of State to direct that the Plan be referred for his direct consideration. However, Officers do not believe that further new evidence is likely to persuade the Inspector and both alternative options would significantly delay the adoption of the Section 1 plans and the continuance of the Section 2 examinations and put at risk the £99million of Housing Infrastructure Funding. It should be noted that as the Inspector's May 2020 letter is not his formal recommendation nor a 'decision', it would not be itself challengeable by judicial review.

Officers therefore, having considered the costs and benefits of the options across all three local authorities, recommend continuing with the present Local Plan process, as previously agreed, with the proposed modifications being published for consultation.

### **Modifications**

Following receipt of the Inspector's letter, Officers from the NEAs asked the Inspector to advise on the specific 'modifications' he would likely recommend if the Councils' agree to proceed with his first option to enable these to be considered by the relevant Committees. Many of the draft modifications (set out in Appendix 2) reflect the suggested amendments that the Committee considered and agreed for consultation in 2019. The most notable of the additional modifications being indicated by the Inspector are those that reflect the removal of two of the three Garden Communities from the plan.

The Inspector has specifically advised as to the 'main modifications' required to make the Section 1 Plan sound i.e. modifications that represent fundamental changes to the policies and proposals in the plan – whereas modifications deemed not to constitute 'main modifications' i.e. minor modifications or consequential changes to the supporting text within the plan are at the discretion of the Councils and are mainly in line with those already considered and agreed by the Committee in 2019.

The detailed schedule of draft modifications is attached as Appendix 2 to this report. The main modifications relate mostly to the deletion of Policies SP9 and 10 from the Section 1 Plan which set out the requirements for the West of Braintree and Colchester Braintree Borders Garden Communities that have been found not to be sound. Of the policies to remain in the modified plan, there are notable modifications proposed for Policies SP2, SP4, SP5, SP6 and SP7 along with the proposed addition of a new Policy SP1A in relation to the 'Recreational disturbance Avoidance Mitigation Strategy' (RAMS).

In summary, the main modifications include:

- Removal of the West of Braintree and Colchester Braintree Borders Garden Communities from the policies and associated maps and diagrams in the Section 1 Local Plan and any other references to those developments in the text of the plan.
- A new policy SP1A on 'Recreation disturbance Avoidance and Mitigation Strategy' (RAMS) setting out how the impacts of new development on internationally important wildlife sites will be avoided and mitigated in line with the European Habitat Regulations.
- Modifications to Policy SP2 'Spatial Strategy for North Essex' to refer to just one Garden Community – the Tendring Colchester Borders Garden Community.
- Modifications to Policy SP4 'Providing for Employment' to update the employment land requirements for each of the three Councils to reflect the latest evidence, including the requirement for Tendring for between 12 and 20 hectares of new employment land in the plan period to 2033.
- Modifications to Policy SP5 to refer specifically to the 'Tendring Colchester Borders Garden Community' and to include a new section (E) aimed at ensuring there is sufficient capacity in the water supply and waste water infrastructure to serve the development.
- Modifications to Policy SP6 'Place-shaping Principles' to include specific requirements in regard to the protection of internationally important wildlife sites which, depending on the findings of ongoing survey work, might include the creation of a new habitat to offset and mitigate any impacts arising as a result of the development.
- Modifications to Policy SP7 to refer specifically to the 'Development and Delivery of a New Garden Community in North Essex' (as opposed to three) and to state specifically that the Tendring Colchester Borders Garden Community will deliver between 2,200 and 2,500 homes and 7 hectares of employment land within the plan period to 2033 (as part of an expected overall total of between 7,000 and 9,000 homes and 25 hectares of employment land to be delivered beyond 2033) and provision for Gypsies and Travellers.
- Further modifications to Policy SP7 to explain that a Development Plan Document (DPD) will be prepared for the garden community containing policies setting out how the new community will be designed, developed and delivered in phases; and that no planning consent for any development forming part of the garden community will be granted until the DPD has been adopted.
- Modifications to Policy SP8 'Tendring / Colchester Borders Garden Community' to state that the adoption of the DPD will be contingent on the completion of a 'Heritage Impact Assessment' carried out in accordance with Historic England, which will inform the content of the DPD.

- Modifications to Policy SP8 to explain how housing delivery for the garden community, irrespective of its actual location, will be distributed equally between Tendring District Council and Colchester Borough Council when it comes to counting house completions and monitoring delivery against each of the Councils' housing targets.
- Modifications to Policy SP8 also requiring that the planning consent and funding approval for the A120-133 link road and Route 1 of the rapid transit system are secured before planning approval is granted for any development forming part of the garden community.
- Other modifications to Policy SP8 emphasising the need for development at the garden community to achieve an efficient use of water, manage flood risk, avoid adverse impacts on internationally important wildlife sites arising from sewerage treatment and discharge, conserve and enhance heritage assets and their settings, and to minimise adverse impacts on sites of international, national and local importance for ecology.
- Finally, modifications to Policy SP8 to require the allocation of land within the garden community to accommodate expansion of the University of Essex.

If the Councils agree to proceed with the current Local Plan process and to consult on main modifications, Officers will make a formal request to the Inspector to issue a finalised version of the schedule which is to be published for consultation. Officers are not expecting the Inspector's finalised schedule of modifications to be materially different from the draft in Appendix 2.

#### Implications of the Heathrow Airport Court of Appeal judgement

Before he issued his letter, the Planning Inspector received correspondence in the form of a paper from Ms. Pearson of CAUSE and Mr. O'Connell, both participants in the Local Plan examination, highlighting the February 2020 decision of the Court of Appeal in relation to Heathrow Airport and expressing their view on the implications for the Section 1 Local Plan.

In that decision, the Court of Appeal ruled on the proposed expansion of capacity at Heathrow Airport through the addition of a third runway, as part of the 'Airports National Policy Statement: new runway capacity and infrastructure at airports in the south east of England' (the 'ANPS'). The ANPS designated by the then Secretary of State for Transport in June 2018 was the subject of a number of legal challenges and the Court of Appeal ruled, on February 2020, that the expansion plans for a third runway at Heathrow were unlawful. This is because the government had not taken into account the UK's commitment to the Paris climate agreement or the full climate change impacts of the proposal.

Ms. Pearson and Mr. O'Connell have suggested, in their paper, that the Section 1 Local Plan might be liable to legal challenge for similar reasons and therefore the Inspector has asked the NEAs to provide their view on the implications of the judgement.

Officers have consulted legal firm Dentons (advisers to the NEAs throughout the examination process) and consultants LUC (authors of the Additional Sustainability Appraisal and Habitats Regulation Assessment) and a letter is being prepared for the Inspector's consideration which will respond to the issues raised and explain how climate change has been adequately taken into account through the preparation and examination of the Section 1 Local Plan. The paper from Ms. Pearson and Mr. O'Connell is available to view on the Braintree District Council examination website (see 'background papers' below) and the NEA's response, once submitted, will be also placed on the website in due course.

## **APPENDICES**

Appendix 1 – Letter from Planning Inspector Roger Clews dated 15 May 2020

Appendix 2 – Inspector's draft schedule of recommended 'modifications' to the Section 1 Local Plan (July 2020)

## **BACKGROUND PAPERS**

[Paper by Rosie Pearson \(CAUSE\) and Matthew O'Connell entitled 'Relevance of Heathrow Court of Appeal Decision for Section 1 North Essex Authorities Local Plan' \(March 2020\).](#)

**Shared Strategic (Section 1) Plan**

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To:

Emma Goodings, Head of Planning and Economic Growth, Braintree District Council

Karen Syrett, Planning and Housing Manager, Colchester Borough Council

Gary Guiver, Planning Manager, Tendring District Council

15 May 2020

Dear Ms Goodings, Ms Syrett and Mr Guiver

**EXAMINATION OF THE SHARED STRATEGIC SECTION 1 PLAN**

**Introduction**

***Purpose of this letter***

1. My letter to the North Essex Authorities [NEAs]<sup>1</sup> of 8 June 2018 [examination document IED/011] set out the shortcomings which, on the evidence available to me at that time, I had identified in the submitted Section 1 Plan and its evidence base. My letter went on to outline the significant further work which I considered the NEAs would need to undertake in order to address those shortcomings, and to set out three options for taking the examination forward.
2. The NEAs decided to pursue Option 2, which involved them producing and commissioning a number of additional evidence base documents with the aim of overcoming the deficiencies I had identified. The examination of the Section 1 Plan was paused from December 2018 until the end of September

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<sup>1</sup> The three NEAs in the context of this letter are Braintree District Council, Colchester Borough Council, and Tendring District Council.

2019 while this further work was carried out and public consultation on the additional evidence took place. I read all the responses to the public consultation, and held further hearing sessions in January 2020 focussing mainly on the additional evidence base documents and the responses to them.

3. I am now in a position to advise the NEAs of my findings, based on the evidence currently before me, on the legal compliance and soundness of the Section 1 Plan, and on the options available to them as a result. In giving this advice, I have taken into account all the written and oral evidence and representations that have been submitted to the examination since it began in October 2017.
4. The examination has now been in progress for two-and-a-half years. It would be in no-one's interests for uncertainty to be prolonged any further. My advice in this letter is therefore given on the basis that it is desirable for the examination of the Section 1 Plan to be brought to a conclusion as soon as possible.
5. This letter focusses on the matters that I consider critical to the outcome of the examination, and sets out my views on those matters. My formal recommendations and the full reasons for them will be given in my report to the NEAs at the end of the examination.
6. This letter should be read in conjunction with IED/011 and also with my supplementary letter to the NEAs of 27 June 2018 [IED/012], in which I gave my views, based on the evidence available to me at that time, on the housing requirements set out in policy SP3 of the Section 1 Plan.
7. The Programme Officer recently forwarded to the NEAs a paper entitled *Relevance of Heathrow Court of Appeal Decision for Section 1 North Essex Authorities Local Plan* [EXD/091], submitted by Mrs Pearson of CAUSE and Mr O'Connell. I would be grateful if the NEAs would provide a response to that paper along with their response to this letter. When I have the NEAs' response I will consider whether any further action is needed on this matter.

### **Context**

8. Before addressing the critical matters I have identified, it is necessary to set the context by considering the overall structure and purpose of the Section 1 Plan. Although it was produced by the three NEAs and covers the whole of the Braintree, Colchester and Tendring local authority areas, it was not produced as a joint plan under the provisions of section 28 of the *Town and Country Planning Act 2004*, as amended ["the 2004 Act"].

Instead, it is intended that the Section 1 Plan (with identical content and wording) will form an integral part of each NEA's individual Local Plan, alongside a Section 2 Plan which each NEA has prepared independently. Because the Section 1 Plan is common to all three NEAs, it is being examined as a single entity, separately from and in advance of the three Part 2 plans.

9. The Section 1 and Section 2 Plans have distinct and complementary roles. Section 1 deals with cross-boundary issues: it provides a spatial portrait of and a strategic vision for the North Essex area, sets out the requirements for housing and employment growth for each of the three districts, and highlights key strategic growth locations across the area<sup>2</sup>. The Section 2 Plans are intended to operate at individual local authority level, providing the strategy for the distribution of, and identifying sites for, most of the new development which each NEA proposes to accommodate in its district.
10. Most significantly, the Section 1 Plan proposes the development of three garden communities [GCs] in North Essex. Two would occupy cross-boundary sites, at Tendring / Colchester Borders and Colchester / Braintree Borders, to the east and west of Colchester respectively. The third would be to the West of Braintree, next to the border with Uttlesford district.
11. The broad locations identified for the three GCs amount to over 2,000 hectares in total, and the Plan, as submitted, expects them to provide up to 43,000 dwellings altogether. Because of their scale, only a relatively small proportion of the development they are proposed to contain would be completed by the end of the plan period in 2033, with the rest coming forward over several decades into the future. Indeed, it is envisaged that the largest of the proposed GCs would not be completed until around the end of this century.
12. The NEAs have appropriately high aspirations for the quality of development at the proposed GCs. A *North Essex Garden Communities Charter*, based on the Town & Country Planning Association's Garden City Principles, but adapted for the North Essex context, sets out 10 place-making principles that articulate the Councils' ambitions for the GCs. In accordance with those principles, the Plan itself expects the GCs to exhibit "the highest quality of planning, design and management of the built and public realm"; to "provide for a truly balanced and inclusive community and meet the housing needs of local people ... including 30% affordable housing at each GC"; to "provide and promote opportunities for employment within each new community and within sustainable commuting

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<sup>2</sup> See the Section 1 Plan, para 1.13.

distance of it"; and to be planned "around a step change in integrated and sustainable transport networks ... that put walking, cycling and rapid public transit networks and connections at the heart of growth in the area"<sup>3</sup>.

13. These policy requirements appropriately reflect the advice at paragraph 150 of the 2012 NPPF that Local Plans are the key to delivering sustainable development which reflects the vision and aspirations of local communities. More specifically, NPPF paragraph 52 advises that

The supply of new homes can sometimes best be achieved through planning for larger scale development, such as new settlements ... that follow the principles of Garden Cities. Working with the support of their communities, local planning authorities should consider whether such opportunities provide the best way of achieving sustainable development.

In reflecting garden city principles, therefore, the Plan's policies for the GCs are consistent with the NPPF's guidance on the way in which sustainable development can be achieved through the development of garden communities.

14. The Section 1 Plan identifies broad locations for the proposed GCs and contains strategic policies to govern their development. After it has been adopted the NEAs intend to bring forward Strategic Growth Development Plan Documents [DPDs] to define specific areas within the broad locations where development will take place, and to set more detailed requirements for the development of the GCs. The NEAs also envisage that masterplans, and other planning and design guidance, will be prepared for each GC.

### **My role**

15. My role is to examine the Section 1 Plan [hereafter referred to for brevity as "the Plan"] in order to determine whether or not it meets the relevant legal requirements and is sound<sup>4</sup>. In determining its soundness I must have regard to national policy in the *National Planning Policy Framework* [NPPF] as published in March 2012. (The March 2012 version of the NPPF, rather than the current version, applies in this examination because the Plan was submitted for examination before the date specified in relevant transitional provisions<sup>5</sup>.) If I find that the Plan is not legally-compliant or sound, I am empowered to recommend main modifications to make it so, if the NEAs ask me to.

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<sup>3</sup> Submitted Plan policy SP7

<sup>4</sup> The 2004 Act, section 20(5)

<sup>5</sup> 2019 NPPF, para 214. Any previous national Planning Practice Guidance which has been superseded since the new NPPF was first published in July 2018 also continues to apply.

16. It is this Plan which will establish whether or not the proposed GCs are acceptable in principle. In considering the soundness of the Plan I have been mindful of the need not to stray into matters of detail that would be more appropriately dealt with in the Strategic Growth DPDs or masterplans. I have also paid careful attention to the support given in national planning policy for the development of settlements that follow Garden City principles<sup>6</sup>, and to the fact that the Government has provided direct support for the North Essex GC proposals through its Garden Communities Programme.
17. My examination of the Plan has been informed by a great deal of detailed evidence, both supportive of and critical of the Plan's proposals. Although it is not possible or indeed necessary for me to refer to every point that was raised in the evidence, I am grateful to everyone who has invested their time and effort in contributing to the examination so far.

***The proposed West of Braintree GC and the former emerging Uttlesford Local Plan***

18. The former emerging Uttlesford Local Plan, which was under examination until 30 April 2020, contained a proposal to identify land in Uttlesford district to form a cross-boundary GC in combination with the proposed West of Braintree GC in North Essex. Land in Uttlesford district cannot be identified or allocated for development by the NEAs, and so it is not for me in this examination to determine whether or not any such proposal is sound.
19. In January 2020 the Inspectors examining the former emerging Uttlesford Local Plan wrote to the Council expressing significant concerns about the soundness of that plan, and indicating that in their view withdrawal of the plan from examination was likely to be the most appropriate option. In paragraph 2 of their letter, they said  
  
In particular, we are not persuaded that there is sufficient evidence to demonstrate that the Garden Communities<sup>7</sup>, and thus the overall spatial strategy, have been justified. We therefore cannot conclude that these fundamental aspects of the plan are sound.
20. On 1 May 2020 Uttlesford District Council wrote to notify the Planning Inspectorate of their decision to withdraw the plan. In the light of that decision, and of the examining Inspectors' comments above, no assumption can be made that any of the GC proposals in the former emerging

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<sup>6</sup> 2012 NPPF, para 52

<sup>7</sup> Three GCs were proposed in the former emerging Uttlesford Local Plan, namely West of Braintree, Easton Park, and North Uttlesford.

Uttlesford Local Plan will be included, and found sound, in any future version of that plan. I take this into account when considering the Plan as a whole, and the proposed West of Braintree GC in particular.

### **Legal compliance**

21. In IED/011 I concluded that each of the NEAs had met the duty to co-operate in the preparation of the Section 1 Plan, and that they had met the relevant procedural requirements with regard to consultation and submission. There has been no subsequent evidence which alters those conclusions. Nor do I find any evidence that anyone's interests were materially prejudiced by the way in which consultation was publicised and carried out in August and September 2019 on the additional evidence prepared by the NEAs.
22. There are legal obligations on the NEAs to prepare and submit a Habitats Regulations Assessment and a Sustainability Appraisal of the Plan. I consider these below.

### **Soundness**

23. At paragraph 182 the 2012 NPPF advises that the soundness of plans is to be examined by reference to four criteria. The Plan undoubtedly meets the first of these. It has been **positively prepared** with the aim of identifying development and infrastructure requirements for the plan period, and it includes the proposed GCs which are intended to make a substantial contribution to meeting those requirements, both in the plan period and beyond.
24. When considering whether or not the Plan is **justified** – that is, whether it is the most appropriate strategy when considered against the reasonable alternatives – the principal evidence base document before me is the Sustainability Appraisal [SA]. I therefore consider the SA in detail below.
25. The NEAs' purpose in producing the Section 1 Plan was to work across local authority boundaries in order to meet strategic priorities. The key question in deciding whether or not the Plan is **effective**, therefore, is whether it is deliverable.
26. There was some discussion at the hearing sessions about the meaning of the word "deliverable" in this context, and I was assisted by further representations, including legal submissions, on the point. In my view the straightforward meaning of the word, ie "able to be delivered", is to be

preferred<sup>8</sup>. But that then raises the question of what it is that must be able to be delivered.

27. The relevant sentence of NPPF paragraph 182 says that the plan should be deliverable. It seems to me that, in this context, the term “the plan” has to be taken to include the policies and proposals in the plan. It would not make sense only to require that the plan document itself is deliverable, if the policies and proposals it contains are not.
28. The sentence also includes the qualification “over [the plan’s] period”. It was suggested that this means that I need not consider whether the GC proposals in the Plan are deliverable beyond the end date of the Plan in 2033. But, as will be seen when I consider the SA below, the advantage which the SA identifies for the Plan’s strategy is that “it provides clear direction for strategic development over many decades to come”. In my view, the Plan could not be considered to be sound if I were to find that the proposed GCs were justified having regard to their ability to provide for strategic development over many decades to come, but reached no finding on whether or not they were deliverable beyond 2033.
29. The 2012 NPPF advises at paragraph 177 that it is important to ensure that there is a reasonable prospect that planned infrastructure is delivered in a timely fashion. The Plan’s policies include a comprehensive set of infrastructure requirements for the GCs, which (in accordance with national policy) appropriately reflect the garden city principles that underpin them<sup>9</sup>. In considering whether the GCs are deliverable, therefore, it is also necessary to take into account whether or not the infrastructure necessary to support them is deliverable.
30. Below I consider in detail the deliverability of the necessary supporting infrastructure and of the proposed GCs themselves.
31. The NPPF’s fourth soundness criterion is that the Plan is **consistent with national policy**, that is, it enables the delivery of sustainable development in accordance with the NPPF’s policies. I consider whether or not the Plan meets this criterion in my overall conclusions on soundness.
32. In considering the soundness of the Plan it is also necessary to review, in the light of current circumstances, the conclusions I reached in IED/011 on the housing requirement figures in the Plan. I deal with that matter first.

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<sup>8</sup> The definition of deliverable sites at footnote 11 in the 2012 NPPF is given in the context of the guidance in NPPF para 47 on the five-year housing land supply, not in the context of the para 182 test.

<sup>9</sup> See paras 12-13 above.

## **The housing requirement figures in the Plan**

33. By virtue of the transitional provisions referred to at paragraph 15 above, the guidance on determining housing need at paragraph 60 of the 2019 NPPF does not apply to the Plan: instead the assessment of housing need was appropriately carried out based on guidance in the 2012 NPPF and the corresponding PPG. In IED/011 I concluded that the housing requirement figures for each of the NEAs, as set out in submitted policy SP3, represent their respective objectively-assessed housing needs, and accordingly that the Plan's housing requirements are soundly based.
34. NPPF paragraph 158 requires plans to be based on up-to-date evidence. Given the time that has elapsed since June 2018, it is therefore necessary to consider whether there has been a meaningful change in the situation regarding housing need<sup>10</sup> in North Essex, which would justify a reconsideration of the Plan's housing requirements.
35. Factors that might indicate a meaningful change in housing need include population and household projections and employment forecasts published since June 2018, and any changes in market signals.

### *Population and household projections*

36. The official 2016-based household projections, published in September 2018, show higher household growth for Colchester borough and Tendring district over the 2013-37 period than the corresponding 2014-based projections. However, for Braintree district they show the opposite, such that the additional growth in Colchester is effectively matched by lower growth in Braintree. Since Braintree and Colchester are part of the same housing market area, redistribution of household growth from one to the other does not constitute a meaningful change in housing need overall.
37. For Tendring district the evidence from recent population and household projections has to be considered in the context of my finding in IED/011 that the NEAs were justified in not using official household projections as the basis for assessing housing need in the district. My full reasons for reaching that finding are given in IED/011, but to summarise briefly, Tendring has one of the highest rates of Unattributable Population Change [UPC]<sup>11</sup> in the country. The evidence before me in June 2018 showed that

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<sup>10</sup> See PPG ID Ref 2a-016-20150227

<sup>11</sup> UPC is the term for the unexplained difference between the population change between 2001 and 2011 as estimated by the Censuses in those years, and the population change over the same period as predicted by official projections.

this was due in substantial part to errors in the migration trend rates used to produce the official population projections, and that it was highly likely that those errors were continuing to distort the official household projections for Tendring, to the extent that the NEAs were justified in using a different basis for assessing future housing need.

38. The official 2016-based sub-national population projections [SNPP] were before me when I considered the issue of UPC in Tendring in IED/011. They form the basis for the 2016-based household projections. Consequently, the publication of the 2016-based household projections does not alter my conclusions on that issue.
39. Since June 2018 the official 2017 and 2018 mid-year population estimates [MYE] have also been published. The fact that the 2018 MYE figure for Tendring closely matches the 2018 population predicted by the 2016-based SNPP is in itself no indication of a meaningful change in the housing situation, since both are informed by the same migration trend rates. I note that the Quality Indicators published alongside the MYEs estimate that there is a relatively low proportion of hard-to-estimate groups (including internal migrants) in Tendring. However, I have seen no evidence that since June 2018 the Office for National Statistics has addressed the specific errors in migration trend rates that gave rise to a substantial part of the exceptional UPC for Tendring.
40. The increasing proportion of older people in the North Essex population may affect the type of housing that needs to be provided, but has no impact on the overall number of dwellings required, as it is accounted for in the population and household projections. Policies on housing type are a matter for the Section 2 Plans.

#### *Employment forecasts*

41. In calculating objectively-assessed housing needs, account was taken of two 2016 economic forecasts of job growth and associated dwelling requirements over the Plan period. The housing requirements for Braintree and Colchester meet the higher of the dwelling requirements from those two forecasts, from the East of England Forecasting Model [EEFM]. A bespoke economic forecast for Tendring similarly showed that its housing requirement would meet future labour demand in full. As a result, in IED/011 I found that economic growth in North Essex would not be hampered by any lack of housing.
42. Since June 2018 a more recent, 2017 forecast from the EEFM has been published. Compared with the 2016 forecast, it shows a reduction of 96 dwellings per annum [dpa] in the dwelling requirements for Braintree, and

an increase of 202dpa for Colchester. For Tendring there is no significant change. On the face of it, these results might appear to indicate a potential increase in housing need for North Essex as a whole.

43. However, whereas the 2016 EEFM forecast for Colchester predicted growth of 928 jobs per annum and a corresponding dwelling requirement of 920dpa, in EEFM's 2017 forecast the jobs per annum figure fell to 724 while the dwelling requirement increased to 1,122dpa. This is a dramatic and apparently anomalous change from EEFM's 2016 figures, and it diverges to an even greater extent from the 2016 forecast by Experian (1,109 jobs per annum, 866dpa).
44. Since I was given no explanation for this apparent anomaly, I consider that substantially less weight should be given to EEFM's 2017 forecast than to the two 2016 forecasts, when assessing housing need. In my experience, economic forecasts can show significant variations from one year to the next, and without corroboration it would be unwise to place reliance on a single set of results. Consequently, I find that the EEFM 2017 forecast does not indicate a need to increase the Plan's housing requirements in order to meet labour demand.

#### *Market signals*

45. Evidence of market signals since June 2018 tends to indicate worsening affordability across North Essex in respect of both house prices and rents, relative to England and Wales as a whole. However, worsening affordability trends were already apparent when the objectively-assessed housing needs were assessed in 2016, and were taken into account in uplifting the housing requirement for each of the three NEAs' areas by at least 15% compared with the demographic starting-point.
46. As a result, the Plan already makes substantial provision to improve affordability over the Plan period. It would be unrealistic to expect any turn-around in affordability trends to have occurred in the past one or two years, especially since the Plan has not yet been adopted. No meaningful assessment of the Plan's impact on affordability can be made after such a short time. As a result, recent market signals evidence does not indicate that the Plan's housing requirements need to be reviewed.

#### *Conclusion on the housing requirement figures*

47. For these reasons, I conclude that neither the population and household projections and employment forecasts published since June 2018 nor recent evidence from market signals indicate that there has been a meaningful change in the housing situation that I considered in IED/011.

Consequently, the Plan's housing requirement figures remain soundly based.

### **Habitats Regulations Assessment [HRA]**

48. In IED/011 I referred to a judgment of the Court of Justice of the European Union [CJEU]<sup>12</sup> and indicated that the NEAs would need to ensure that the HRA report on the pre-submission Plan was consistent with that judgment. In response, the NEAs commissioned Land Use Consultants [LUC] to produce an updated HRA report on the Plan [EB/083]. The updated report takes account of recent caselaw including the judgment I referred to. It concludes:

... providing that key recommendations and mitigation requirements are adopted and implemented, the [Plan] will not result in adverse effects on the integrity of European sites either alone or in-combination.

Natural England concur with this conclusion.

49. The NEAs consider that the Habitats Regulations<sup>13</sup> do not require an assessment of future growth beyond the Plan period. Nonetheless, both they and LUC made it clear that EB/083 does in fact take account of the implications for European sites of the development beyond 2033 that is proposed in the Plan – ie, future growth at the proposed GCs. In my view that is appropriate, since the Plan's policies envisage that development of the GCs will occur both within the Plan period and for a long period beyond. However, some references in the report appear to indicate that it considers impacts within the Plan period only. The NEAs and LUC should review those references so that the report is consistent on this point.

50. EB/083 follows a sound methodology, beginning with a screening stage to assess the likelihood of significant effects on European sites by the Plan's proposals (alone or in combination). This is followed by an Appropriate Assessment in which any likely significant effects are assessed, in the light of avoidance and mitigation measures, in order to determine whether or not they would result in an adverse effect on the integrity of any European site.

51. I consider that it is reasonable for EB/083 to conclude that main modifications to Plan policies SP5, SP7, SP8, SP9 and SP10, requiring adequate waste water treatment capacity to be provided before dwellings

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<sup>12</sup> *People over Wind, Peter Sweetman v Coillte Teoranta* [CJEU Case C-323/17]

<sup>13</sup> *The Conservation of Habitats and Species Regulations 2017*

are occupied, will ensure that no adverse impact on any European site will occur as a result of changes in water quality.

52. It is also reasonable for EB/083 to conclude that any adverse impacts arising from loss of offsite habitat<sup>14</sup> for wintering birds will be avoided provided that mitigation safeguards are incorporated into the Plan through a main modification to policy SP8. Those safeguards include requirements for surveys of the broad location of the Tendring / Colchester Borders GC to identify whether it provides any functionally-linked offsite habitat for relevant bird species, and if necessary, phasing of development and provision of alternative offsite habitat to offset any loss resulting from development.
53. The size of the broad location means that there is no real doubt that alternative habitat could be provided on site, through the DPD and master-planning processes, if it were found to be necessary. Accordingly, it is not necessary for the surveys to take place before the Plan itself is adopted.
54. The other cause of likely significant effects identified by EB/083 is the impact of the recreational activities of future residents on European sites along the Essex coast and its estuaries. This is also a concern for other local authorities in Essex. In response, an Essex Coast Recreational avoidance and Mitigation Strategy [RAMS], initiated by Natural England, has been adopted by 11 Essex authorities. Its implementation is managed by a steering group on which Natural England is represented.
55. The RAMS, which is to be funded by a per-dwelling tariff on residential development, involves a range of measures including habitat creation, access management, information and consciousness-raising, and enforcement. EB/083 concludes that the RAMS provides a high degree of certainty that recreational pressures will not lead to adverse effects on the integrity of the European sites.
56. In my view, EB/083 has adequately assessed the likelihood of significant effects arising from recreational activities, including by identifying appropriate zones of influence based on visitor surveys. It may be that measures to control airborne activities, such as powered paragliding, are more difficult to enforce than for land- or water-based activities. But airborne activities involve relatively small numbers of people, whom it would be possible to target with information and education campaigns. Indeed I was told that such campaigns are already under way.

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<sup>14</sup> "Offsite habitat" in this context means habitat that is not part of a European site but is functionally linked to it, providing ecological support for the bird populations for which the site was designated.

57. The current RAMS covers the period 2018 to 2038. However, the NEAs made it clear that they intend the RAMS approach to operate in perpetuity. Plainly, that will be essential if significant development within the zones of influence is to be able to continue beyond 2038, assuming that the Habitats Regulations (or a similar protection regime) remain in force. Funding arrangements to ensure that it occurs are proposed in the current RAMS document. I therefore see little danger that the RAMS approach will cease after 2038.
58. The RAMS includes provision for monitoring its effectiveness, which it is intended will feed back into the mitigation measures in an iterative fashion, enabling adjustments and improvements to be made in response to evidence of how successful the measures are. In my view this is a strength rather than a weakness of the RAMS approach. While there is currently no conclusive evidence that RAMS approaches elsewhere have ensured that no adverse effects on integrity have occurred, that is not because there is evidence that they have failed, but because they have not been operating long enough for definitive conclusions to be drawn.
59. Taking into account the mitigation measures, which as well as the RAMS include the proposed modifications to the Plan's policies, the NEAs are satisfied that there is sufficient certainty that the Plan would not adversely affect the integrity of any European site, alone or in combination. In the light of all the above points, I consider that they are justified in taking that view.

## **Justification for the proposed GCs**

### ***Sustainability Appraisal***

#### *Background*

60. In IED/011 I identified a number of shortcomings in the June 2017 SA of the Plan carried out by Essex County Council [ECC]'s Place Services [SD/001], and made a number of specific suggestions as to how those shortcomings might be rectified. In response, the NEAs commissioned external consultants LUC to carry out an Additional Sustainability Appraisal of the Plan [SD/001b, hereafter "the ASA"], which was completed in July 2019.
61. The ASA does not replace the June 2017 SA in its entirety: its purpose is to address my concerns about the approach of that earlier SA document to the assessment of alternative GC options and of alternative spatial strategies. Accordingly, the ASA replaces Appendix 1 of the June 2017 SA,

which deals specifically with these matters, and provides further appraisal information relevant to chapters 4 to 7 of the June 2017 SA. In this letter I focus on the ASA, as it is specifically intended to redress the shortcomings I had previously identified.

62. The ASA has a two-stage methodology, which closely follows my suggestions in IED/011. In Stage 1, LUC appraise alternative strategic sites that could form part of the Plan's spatial strategy. In Stage 2, they appraise a range of alternative spatial strategies, including various combinations of the strategic sites that survive the Stage 1 appraisal. The NEAs themselves decided which strategic sites were taken forward from Stage 1, and which spatial strategic alternatives were to be appraised at Stage 2, giving their reasons in Appendix 6. In Appendix 8 the NEAs give their reasons for preferring the spatial strategy in the submitted Plan to any of the alternative strategies.

#### *National policy and guidance*

63. Paragraph 165 of the 2012 NPPF advises that:

A sustainability appraisal which meets the requirements of the European Directive on strategic environmental assessment should be an integral part of the plan preparation process, and should consider all the likely significant effects on the environment, economic and social factors.

64. The PPG defines the role of SA as:

... to promote sustainable development by assessing the extent to which the emerging plan, when judged against reasonable alternatives, will help to achieve relevant environmental, economic and social objectives.

This process is an opportunity to consider ways by which the plan can contribute to improvements in environmental, social and economic conditions, as well as a means of identifying and mitigating any potential adverse effects that the plan might otherwise have. By doing so, it can help make sure that the proposals in the plan are the most appropriate given the reasonable alternatives<sup>15</sup>.

65. The reference to "help[ing] make sure that the proposals in the plan are the most appropriate given the reasonable alternatives" indicates that SA is directly relevant to the assessment of whether the plan meets the "justified" test of soundness. As I noted in paragraph 24 above, in this case the SA (including the ASA) is the principal evidence base document which seeks to show that the Plan meets that test.

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<sup>15</sup> PPG ID Ref 11-001-20140306

*Issues to be considered*

66. In my view the NEAs have met the relevant statutory requirements for consultation on and submission of the SA and ASA reports. In assessing the likely significant effects on the environment of the GC proposals in the Plan and of the reasonable alternatives to them which it identifies, the ASA deals with all the relevant issues identified in Schedule 2 of the SEA Regulations. In combination with the June 2017 SA, it also meets the Schedule 2 requirements to identify the measures envisaged to prevent, reduce and as fully as possible offset any significant effects on the environment of implementing the Plan, to describe the monitoring measures envisaged, and to provide a non-technical summary.
67. The principal issues that require further consideration are:
- whether reasonable alternatives for the Stage 1 and Stage 2 assessments were properly identified, so that no reasonable alternative was excluded from the assessments;
  - whether adequate reasons were given following the Stage 1 assessment for the selection of alternative strategic sites and alternative spatial strategies to be assessed at Stage 2, and for the rejection of other alternatives;
  - whether the assessment, at both Stage 1 and Stage 2, of the likely effects (including cumulative effects) of the Plan's proposals and of the reasonable alternatives were carried out at the same level of detail, and in sufficient depth to enable a proper evaluation to be made;
  - whether the ASA, together with the June 2017 SA, helps to demonstrate that the proposals in the Plan are the most appropriate, given the reasonable alternatives.

*Were reasonable alternatives properly identified?*

68. Reg 12(2)(b) of the SEA Regulations makes it clear that it requires assessment of the likely significant effects of reasonable alternatives taking into account the objectives of the plan. From what is said in the Section 1 Plan about its purpose<sup>16</sup>, it does not have the objective of providing an overarching strategy to govern the distribution of all development across the North Essex area. Consistent with this is the fact that the shared Section 1 Plan has not been prepared as a joint development plan

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<sup>16</sup> See the Introduction to the Plan, in particular para 1.13, and section 3, Spatial Strategy.

document under section 28 of the 2004 Act, as one would expect if it were intended to have the role of a joint spatial strategy.

69. The limited role of the Section 1 Plan is explained further in paragraphs 3.1-3.2 of the reasoned justification to policy SP2 (Spatial Strategy for North Essex):

New homes, jobs, retail and leisure facilities serviced by new and upgraded infrastructure will be accommodated as part of existing settlements according to their scale, sustainability and role, and by the creation of strategic scale new settlements. ... For the majority of settlements these issues are addressed in the second part of the Local Plan dealing with each authority's area.

70. Against this background, in my view it is legitimate for the ASA to confine itself to assessing reasonable options for providing the amount of development which the Section 1 Plan expects the GCs to deliver in the plan period. Policy SP2 makes it clear that this is at least 7,500 dwellings, together with employment development and necessary infrastructure and facilities. That is the relevant objective which the Plan sets for itself. The Plan does not seek to provide, or to set out a strategy for the provision of, all the development needed across the North Essex area. Apart from the GC development proposed in the Plan itself, those tasks are left to the Section 2 plans.
71. Similarly, it is legitimate for the ASA to identify, as reasonable options for the Stage 1 assessment, only strategic sites capable of delivering at least 2,000 dwellings. The relevant Section 1 Plan objective in this context is to identify key strategic growth locations. It is not to identify every possible location for development across North Essex. Given that the largest of the sites proposed for allocation in the Section 2 plans would comprise around 1,700 dwellings, the decision to set a 2,000-dwelling capacity as the cut-off point between strategic and other sites was in my view a reasonable planning judgment, appropriately reflecting the respective roles of the Section 1 and Section 2 plans.
72. 23 alternative strategic sites (including the three GC sites in the Plan) were assessed during the Stage 1 assessment, and most of them were assessed at a range of different sizes. They made up an impressively comprehensive list, and I find no evidence that any strategic site that could have been a reasonable alternative was excluded from it.
73. I consider whether or not reasonable alternatives for the Stage 2 assessment were properly identified as part of the next issue.

*Were adequate reasons given for the selection of alternative strategic sites and alternative spatial strategies to be assessed at Stage 2, and for the rejection of other alternatives?*

74. Appendix 6 to the ASA, which was prepared by the NEAs, sets out how the reasonable spatial strategy alternatives for the Stage 2 assessment were identified, giving reasons for taking forward or discounting the alternative strategic sites assessed at Stage 1. It also describes what each of the spatial strategy alternatives would provide.
75. Over half of the **alternative strategic sites** assessed at Stage 1 were not taken forward into the spatial strategy options assessed at Stage 2, for reasons that are set out in ASA Appendix 6, Table 2. The reasons given in the table make no explicit reference to the Stage 1 ASA. This may reflect the fact that the outcome of the Stage 1c assessment does not show any of the alternative sites to be clearly preferable to the others. Against many of the objectives, all the sites are deemed to have the same or very similar impacts, and for the objectives against which they differ, there is little overall distinction between them when all their positive and negative impacts are taken into account.
76. Instead, broader planning reasons are given for not taking forward the discounted sites from Stage 1. They are summarised in Appendix 6 as follows:

The main reasons for sites being discounted at this stage relate to either a lack of evidence to suggest there are reasonably deliverable proposals being advanced through the plan-making process at this time, or a lack of evidence to demonstrate that they are reasonable options in practical planning terms. Some sites have been discounted because they overlap or form part of a larger site that is being carried forward into Stage 2 or, following responses to the engagement with site promoters, it has been decided to merge certain sites together.

77. For each of the discounted sites, Table 2 then sets out the NEAs' reasons for not taking it forward into Stage 2. These include concerns about highway capacity and availability of infrastructure and services, impact on landscape character, relationship to existing settlements, and deliverability. It may be that others would have made different planning judgments on some of these points, but nothing I have heard or read indicates that any of the judgments made by the NEAs was unreasonable or irrational. I therefore consider that Table 2 provides adequate reasons for not taking forward the discounted sites.
78. The NEAs' selection of **alternative spatial strategies** to be assessed at Stage 2 was informed by a series of seven principles which they devised in the light of discussions with stakeholders and of my comments in IED/011.

As the NEAs correctly note, attempting to assess every possible combination of every site taken forward into Stage 2 would be an unmanageable task. Devising principles to inform the selection of alternative spatial strategies is, therefore, a reasonable way to proceed, providing of course that the principles themselves are sound.

79. Five of the seven principles are that the alternative strategies should be coherent and logical, and reasonable, that they should test the alternative spatial approaches suggested by me in IED/011, that they should deliver social infrastructure, and that any strategic site included in them should deliver a minimum of 2,000 dwellings in the plan period. In my view, and taking into account my comments above on the reasonableness of the 2,000-dwelling threshold for alternative strategic sites, these principles are sound ones.
80. Principle 1 is entitled "Meet the residual housing need within the plan period". Residual housing need is the gap between the Plan's overall housing requirement for North Essex (43,720 dwellings) and the number of dwellings completed, committed, and planned for in the NEAs' Section 2 Plans. Self-evidently, it is a sound principle that this need should be met.
81. When the Plan was submitted in 2017, residual housing need across North Essex was around 4,700 dwellings. The 7,500 dwellings proposed at the GCs would therefore mean that housing supply over the Plan period would exceed the requirement by about 2,800 dwellings, or around 6% of the overall requirement.
82. By the time the ASA was published in July 2019, residual housing need had been reduced to around 2,000 dwellings<sup>17</sup>, meaning that the 7,500 dwellings proposed at the GCs would generate a surplus in supply of about 5,500, or around 13% above the overall requirement.
83. Despite this, the NEAs still believe it is right to test spatial strategy alternatives with the potential to deliver 7,500 dwellings in the remainder of the Plan period to 2033. In Appendix 6, they justify this by saying that delivery of 7,500 dwellings on strategic sites would provide "a healthy level of over-allocation", thereby ensuring that the Plan's housing requirement would be met even if some of the sites allocated in the Section 2 plans fail to come forward.
84. No evidence appears to have been provided at the time to show why 7,500 dwellings, rather than some lower figure, would produce an appropriate

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<sup>17</sup> See ASA Appendix 6, Table 1. The reduction is apparently due mainly to grants of planning permission on unallocated sites.

level of over-allocation. Moreover, the latest evidence from the NEAs is that, excluding any dwellings proposed in the Section 1 Plan, there is no longer any residual housing requirement for the Plan period<sup>18</sup>. On that basis, the addition of the 7,500 dwellings sought under Principle 1 of the ASA would represent an over-allocation of around 18%, not 13% as was the case when ASA Appendix 6 was drawn up.

85. The ASA's authors cannot be criticised for proceeding on the basis of the figures that were current at the time when it was produced. And, in my view, it is reasonable for the Plan to identify more land than may be needed to meet the NEAs' housing requirements, to help ensure that the requirements are met in the event that some of the expected provision does not come forward. The scale of any such over-allocation is a matter of planning judgment. An over-allocation of 18% against the Plan's overall housing requirement for the period would provide an even healthier level of reassurance than one of 13%. Consequently, I see no reason to find that the ASA is unsound in seeking alternative spatial strategies to deliver at least 7,500 dwellings over the Plan period.
86. Principle 3 is entitled "Reflect relative housing and commuting patterns in any alternative strategy". In explaining the principle, the NEAs say that housing need is greater in the western part of North Essex (the area west of Colchester) than in the eastern part. That is generally borne out by the respective housing requirements of the three NEAs, and by the breakdown of residual housing need across the three NEAs at the time when Appendix 6 was prepared. Differences in commuting relationships<sup>19</sup> and transport links between the areas to the west and east of Colchester also justify considering the two areas separately.
87. It is logical, therefore, that in accordance with Principle 3 alternative strategies were selected to deliver a greater proportion of housing to the west of Colchester than to the east, broadly reflecting the residual requirements which applied in July 2019.
88. Based on the NEAs' seven principles, Appendix 6 identifies 11 alternative spatial strategies for the area to the west of Colchester, and six alternative strategies for the area to the east, giving clear reasons for each. They include strategies to distribute housing growth proportionately to settlements across North Essex, alongside various combinations of the alternative strategic sites taken forward from Stage 1 of the ASA. The alternatives are sufficiently distinct from one another to enable meaningful comparisons to be made.

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<sup>18</sup> See the NEAs' Matter 8 Further Hearing Statement, December 2019, Table 1b. In fact the figures in the table show a small surplus of 377 dwellings.

<sup>19</sup> See EB/018, pp9-11.

89. Taken as a whole, the alternative strategies represent an appropriate range of different ways of delivering the amount of development that is sought, taking appropriate account of my suggestions in IED/011, and I see no basis on which to conclude that any reasonable alternative was excluded from the assessment.

*Was the assessment of the Plan's proposals and the reasonable alternatives carried out at the same level of detail?*

90. Stage 1 of the ASA is scrupulously fair in considering the broad locations for the proposed GCs and the reasonable alternative strategic sites at the same level of detail. The 23 strategic sites are assessed against a common set of criteria which appropriately reflect the Plan's objectives and the full range of considerations relevant to SA, and the results are clearly presented in tabular format. The assessment shows no sign of bias in favour of or against any of the sites.

91. The same applies to the assessment of the 17 alternative spatial strategies considered at Stage 2. I find no evidence that there was a failure to assess potential cumulative effects at either stage.

*Was the assessment of the Plan's proposals and the reasonable alternatives carried out in sufficient depth?*

92. Stage 1 consists of two sequential steps. Stage 1a appraises the location of each of the 23 strategic sites in relation to existing key services, facilities, employment locations, transport links, and environmental assets and constraints without considering what the development itself might deliver. These spatial tests were carried out using a geographical information system.

93. Stage 1c (which replaces a previous Stage 1b) then takes into account how the accessibility of each site to the key services, facilities, employment locations and transport links identified at Stage 1a would be modified by what is likely to be provided by development coming forward on each site, at different scales. In other words, each site was assumed to provide education, community, health and retail facilities, employment space and public transport services in proportion to its size.

94. In assessing what is likely to be provided, account was taken of site-specific information drafted by the NEAs and confirmed with the site promoters and with CAUSE<sup>20</sup>. The Stage 1 assessments in turn informed the assessment

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<sup>20</sup> CAUSE are a group with an alternative Local Plan strategy, known as Metro Town.

of the alternative strategic sites at Stage 2. Provision of rapid transit services was excluded from the Stage 1c assessment, but was taken into account for the relevant spatial strategy alternatives at Stage 2.

95. The ASA was criticised for taking at face value the site-specific information on the forms drafted by the NEAs. But a great deal of additional work would have been required to interrogate that information, for example to ascertain whether or not each of the alternative sites is financially capable of delivering all the facilities attributed to it. Such detailed scrutiny is appropriate when assessing the soundness of a preferred option, but would have been disproportionate at this stage of the SA process. Asking the site promoters and CAUSE to confirm the information drafted by the NEAs ensured that sufficient information for Stage 1c was provided, on an equivalent basis for each site.
96. A broader criticism of the Stage 1 ASA was that its proximity-based approach is too crude, and so fails to make a proper assessment of each alternative site's accessibility to facilities and services, and of its environmental impacts. It is true that at Stage 1a more detailed assessment could have differentiated the quality of facilities and services accessible from each site, for example, the range of employment opportunities or the frequency of public transport. However, that would have made little difference to the outcome of the assessment, since no sites were excluded at Stage 1a. At Stage 1c the provision of facilities and services as part of the development of each site was more decisive in the appraisal of accessibility than proximity to existing facilities.
97. In assessing environmental impacts, however, in most cases a similar (albeit not necessarily identical) proximity-based approach to that used at Stage 1a was employed at Stage 1c. For example, effects on heritage assets are assessed based on whether 5% or more of each site lies within a certain distance of a designated heritage asset. In fact, every site assessed at Stage 1c is deemed to have a "significant negative effect with uncertainty", reflecting the fact that all of them lie within 500m of at least one designated heritage asset.
98. The ASA's approach was criticised by, among others, Historic England, who argue that the lack of detailed evidence on the likely effects of the alternative strategic sites on the **historic environment** has led to over-simplification and inadequate differentiation between them. They consider that a high-level Heritage Impact Assessment [HIA] of each site should have been undertaken to inform the ASA. In the absence of adequate assessment, Historic England say, there can be no confidence that the GC sites proposed in the Plan are capable of accommodating the proposed

number of dwellings without adversely impacting on the historic environment.

99. Historic England also draw attention to the facts that the ASA does not identify (or fully identify) some of the designated heritage assets in and around the proposed GC sites, does not consider the effects of alternative sites on non-designated heritage assets, and uses a distance-based approach contrary to Historic England's published advice<sup>21</sup>.
100. There can be little doubt that a more detailed assessment of the likely effects of the alternative strategic sites on the historic environment would have enabled the ASA to differentiate more clearly between them. But I am not persuaded that the absence of such assessment is a fatal defect in the ASA. This is mainly because the Section 1 Plan does not make specific site allocations for the proposed GCs: instead it identifies broad locations, within which it is intended that the Strategic Growth DPDs will identify specific locations for development. In this context, it appears to me that Historic England's advice on site allocations is more applicable to the future DPDs than to the Section 1 Plan.
101. In taking a proximity-based approach to impacts on heritage assets, the ASA is consistent with the approach it takes to other environmental impacts. Were it to use more detailed evidence to assess impacts on one type of environmental asset, but not the others, this could run the risk of unbalancing the overall assessment. It is unfortunate that the ASA does not identify all the designated heritage assets potentially affected. But had it done so, it is highly unlikely that the outcome of the Stage 1 assessment would have been any different, since all the alternative sites (and indeed all the spatial strategy options assessed at Stage 2) are already deemed to have significant negative effects, with uncertainty, on heritage assets.
102. That said, I share Historic England's concern that, without a detailed Heritage Impact Assessment, there can be no certainty that any of the GCs proposed in the Plan are capable of accommodating the amount of development which the Plan attributes to them, without unacceptable adverse impacts on the historic environment. Given the size of the broad locations proposed for the GCs, I consider it is reasonable at this stage to assume for the purposes of the ASA that they are capable of doing so. But appropriate policy safeguards need to be included in the Plan in the event that, in future, evidence shows this not to be the case. This could be achieved by main modifications to the relevant Plan policies.

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<sup>21</sup> In *The Historic Environment and Site Allocations in Local Plans* – Historic England Advice Note 3

103. On the face of it, it appears surprising that the ASA finds only uncertain minor negative effects on **air quality** for some of the strategic site alternatives, and no significant effects for the majority of the spatial strategy alternatives. However, the ASA advises that without traffic modelling of each strategic site alternative, its assessment needs to be treated with a great deal of caution.
104. While I acknowledge the severe effects of air pollution on human health, I am also mindful of the need for a proportionate approach to gathering evidence for SA<sup>22</sup>. It would be disproportionate to require traffic modelling of each of the 23 strategic site alternatives, and all 17 alternative spatial strategies, when only three strategic sites are actually proposed in the Plan.
105. The ASA appropriately acknowledges the difficulties in compiling the information needed to assess impacts on air quality. Any differences it finds between the alternatives on this issue are so small as to make it highly unlikely that they affect the overall outcome of the assessment. For these reasons I consider that the ASA's approach to the issue is adequate at this stage.
106. The ASA finds no significant effects on **water quality** in respect of any of the strategic sites assessed, while acknowledging a degree of uncertainty given that not all scales of growth for all the sites have been covered in the Water Cycle Studies and because specific waste water infrastructure requirements will only be finalised at planning application stage. Those are reasonable findings at this stage of planning, taking into account that, with main modifications, Plan policies are capable of requiring adequate water supply and waste water treatment capacity to be provided before any dwellings are occupied.
107. At Appendix 5, paragraph 3.1173, the ASA says that the potential **noise effects** from Stansted airport flight-paths on future residents of the proposed West of Braintree GC are judged to be negligible. However, based on the assessment of the potential effects of operations at the adjacent Andrewsfield airfield, the Stage 1c scoring chart for the West of Braintree GC site [NEAGC1] shows an overall "uncertain minor negative effect" score against the noise nuisance criterion.
108. Taking into account all the evidence before me, including noise contour plans supplied by the airport operator, evidence on the number of flights passing over the West of Braintree site at 7,000 ft or lower, and existing and emerging Government guidance on aircraft noise, I consider that even if a finding of "negligible effect" from Stansted airport flight-paths on

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<sup>22</sup> See PPG Ref ID 11-009-20140306

NEAGC1 is not within the range of reasonable planning judgment, a finding of “uncertain minor negative effect” would be. Moreover, I note that in summarising and concluding on the findings of the Stage 1c assessment on noise pollution, the ASA makes no distinction between sites with minor negative effects (uncertain or otherwise) and those with negligible effects. Therefore, it appears that even if the finding of “negligible effect” is unjustified in respect of the noise effects of Stansted flight-paths, it has not materially affected the ASA’s conclusions.

109. The ASA is justified in finding that, since the West of Braintree GC as proposed in the submitted Plan does not overlap with the Andrewsfield airfield site, development of the former would not directly lead to loss of flight operation facilities, community facilities, or historic assets forming part of the latter. The impact on Andrewsfield of the West of Braintree proposal in the former emerging Uttlesford Local Plan is not a matter for this examination.

110. Taking all the above points into account, I conclude that the assessment of the Plan’s proposals and of the reasonable alternatives was carried out in sufficient depth to enable a proper evaluation to be made.

*Does the ASA help to demonstrate that the proposals in the Plan are the most appropriate, given the reasonable alternatives?*

111. From the ASA, LUC conclude that the spatial strategies that rely solely on proportionate growth at existing settlements are the poorest performing, but that for the others, the differences are much more finely balanced. They say that it is therefore not possible to come to a definitive conclusion that any one strategy, whether west of Colchester or east of Colchester, is the most sustainable option. The advantage of the strategy in the submitted Section 1 Plan, according to LUC, is that it provides clear direction to accommodate strategic development over many decades to come, and therefore more certainty in terms of coherence and investment. However, some of the alternatives offer opportunities to deliver similar benefits.

112. In my view it is reasonable to draw those conclusions from the ASA.

113. In Appendix 8 to the ASA the NEAs set out their reasons for proceeding with the spatial strategy in the submitted Plan, that is to say, the three proposed GCs, rather than any of the alternatives. They say that

a number of sites and spatial strategy options perform similarly against the sustainability objectives, but nothing arises from the [ASA] to suggest that the

spatial strategy in the submitted Plan is wrong or that there are any obviously stronger-performing alternatives ...

114. To the west of Colchester, the NEAs say, the proposed West of Braintree and Colchester / Braintree Borders GCs have the genuine advantages of providing for long-term strategic growth. West of Braintree has direct access to the A120 and the proposed rapid transit system [RTS], and is well-located to Stansted airport which is a centre of employment and provides opportunities for new business growth. Colchester / Braintree Borders is close to Marks Tey station which has regular services to London, Colchester and beyond, is well located at the intersection of the A12 and A120 with good opportunities for integration with other transport modes, including the RTS, and has opportunities for sustainable travel into Colchester which is a regional centre for employment and has major health, shopping and cultural facilities.
115. To the east of Colchester, the NEAs consider that the Tendring / Colchester Borders GC offers benefits to Colchester and Tendring in terms of housing delivery, improved accessibility through rapid transit and the A120/A133 link road, and unlocking the economic potential for expansion of the University of Essex and the Knowledge Gateway.
116. It is clear from this that, apart from any specific locational advantages, many of the benefits which the NEAs ascribe to the proposed GCs depend on the delivery of strategic transport infrastructure, for example the RTS and the A120/A133 link road. Similarly, the advantages which the proposed GCs offer in providing for long-term strategic growth would only be realised if the GCs are actually capable of being delivered over the long term. Accordingly, deliverability is critical to the justification of the Plan's spatial strategy, including the proposed GCs. I consider the issue of deliverability in the next section.

## **Deliverability of the proposed GCs**

### ***Infrastructure needed to support the proposed GCs***

#### *Trunk road improvements*

117. In IED/011 I said that “greater certainty over the funding and alignment of the A120 dualling scheme and the feasibility of realigning the widened A12 at Marks Tey is necessary to demonstrate that the GC proposals are deliverable in full”.

118. Since June 2018 trunk road schemes in North Essex have moved forward as follows:

- A preferred route for the A120 dualling scheme has been established, and development work on the scheme is included in the Department for Transport’s Roads Infrastructure Strategy 2 [RIS2] for 2020-25.
- This means that the scheme is in the “pipeline” for RIS3 (2025-30), but currently there is no commitment to the construction of the scheme. The RIS2 document says

New proposals need to consider a wide range of impacts: not only what can be promised with certainty, but also where a proposal has the potential to support wider and more ambitious local plans for development. ... We also expect that where a proposal enables significant development nearby, the developer will contribute to the cost of delivering the scheme. There is also potential for funding from other sources to support a developing proposal. Funding contributions will make a significant difference to the likelihood of government choosing to bring forward a proposal to the next stage, and ultimately to commit it as part of the next RIS.

- Widening of the A12 between junctions 19 and 25 is included in the RIS2 programme.
- The Spring 2020 Budget statement announced a £272M grant from the Housing Infrastructure Fund. According to the Treasury’s East of England Factsheet, this funding “will be used to realign the eastern section of the A12 between Junctions 24 and 25 in order to unlock up to 20,931 homes as part of the North Essex Garden Community”. In late 2019 Highways England consulted on alternative options for the realignment, the aim of which is to overcome the severance effect on the Colchester / Braintree Borders GC of the A12’s existing alignment.

119. The publication of RIS2 and the Spring 2020 budget mean that it is now reasonable to assume that the A12 widening scheme will go ahead,

including the realignment between junctions 24 and 25, with a good prospect of completion by Highways England's expected date of 2028.

120. On the other hand, notwithstanding its inclusion in the RIS3 pipeline, there is still no certainty on whether or not the A120 dualling scheme will go ahead. However, the fact that it would support development at two of the three proposed GCs, and that contributions towards it are expected from the GC developers, are strong factors in its favour. If funding for the scheme is confirmed, there is a good prospect that it will also be completed by 2028.
121. The implications for the two GCs to the west of Colchester are as follows.
122. Both Highways England and ECC consider that completion of the A120 dualling scheme is necessary to support the full build-out of 10,000 dwellings at the West of Braintree GC<sup>23</sup>. However, partial build-out in advance of the A120 scheme could be achieved without severe detriment to the road network, when account is taken of other committed road improvements, including those to M11 junction 8, the A131 between Braintree and Chelmsford, and the A120 / B1018 junction at Braintree.
123. At the Matter 6 hearing session, the NEAs' representative indicated that at least 2,000 dwellings could come forward at the West of Braintree GC in advance of the A120 scheme, but that the scheme would become necessary at some point between the completion of 2,000 and 10,000 dwellings. I do not read ECC's application to the National Productivity Investment Fund for funding for road improvements at Braintree as contradicting that view.
124. Promoters of the West of Braintree GC contend on the basis of census data that only a small proportion of journey-to-work trips to and from the West of Braintree GC would use the A120 to the east of Braintree, and consequently that the feasibility and deliverability of the GC does not rely on delivery of the A120 dualling scheme. However, in the absence of detailed modelling to support that conclusion, I give more weight to the views of Highways England and the local highway authority.
125. Taking into account likely future improvements to M11 junction 8, I see no reason to consider that development at the proposed West of Braintree GC would be constrained by capacity issues on the A120 to the west.
126. Turning to the Colchester / Braintree Borders GC, there is no substantial evidence to contradict the NEAs' position that completion of both the A12

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<sup>23</sup> While submitted Plan policies SP7 & SP10 propose an overall total of between 7,000 and 10,000 dwellings, the NEAs' viability appraisal assumes a total of 10,000.

widening scheme, including one of the alternative route options between junctions 24 and 25, and of the A120 dualling scheme are needed to support the full build-out of 21,000 dwellings at the GC<sup>24</sup>.

127. Consequently, notwithstanding the decision to proceed with the A12 widening as part of RIS2, full build-out of the Colchester / Braintree Borders GC is dependent on confirmation of funding for the A120 scheme.

128. The promoters of the Colchester / Braintree Borders GC say that their technical evidence demonstrates that it would be possible to build up to about 2,500 dwellings without the need for either the A12 widening or the A120 dualling scheme. However, a 2,500-dwelling development at Colchester / Braintree Borders would be very different from the GC proposal in the Plan. If funding for the A120 scheme were to be confirmed, it might in principle be appropriate to allow some development to proceed before the A12 and A120 schemes are complete. But for the reasons given in paragraphs 28 and 116 above, it would be entirely inappropriate to find that the proposed GC is deliverable if the available infrastructure would allow only a small fraction of it to be built.

#### *A120-A133 link road*

129. ECC have secured £65 million [M] from the Housing Infrastructure Fund [HIF] to build a dual-carriageway link road between the A120 and A133 to the east of Colchester<sup>25</sup>. The cost breakdown provided by ECC [in EXD/082] indicates that £65M would cover all the costs of the road and would include a contingency allowance of around 21%. Other participants provided alternative costings, but I have no reason to consider that the figures prepared by the local highway authority, ECC, which were subject to scrutiny through the HIF bid process, are unreasonable. Having said that, a contingency allowance of 21% appears low at this stage of planning, especially when compared with the 44% contingency allowance which ECC considered appropriate for the RTS (see below).

130. ECC undertook consultation on route options in Autumn 2019. Each route option is located towards the eastern edge of the broad location for the proposed Tendring / Colchester Borders GC. They vary in the extent to which they impinge on the potential development areas within the broad location. While at least one of the options appears likely to have a significant severance effect within the broad location, the range of options

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<sup>24</sup> Full build-out at Colchester / Braintree Borders is now considered by the NEAs to comprise 21,000 dwellings, and viability appraisal has been carried out on that basis, notwithstanding that submitted Plan policies SP7 & SP9 propose a total of between 15,000 and 24,000 dwellings.

<sup>25</sup> The HIF funding also includes £35M for Route 1 of the RTS: see below.

available means that there is the opportunity to minimise any such effect. However, it will also be important to ensure that there is adequate access, including for pedestrians and cyclists, from the proposed GC across the link road into the countryside to the east. It is unclear to what extent that requirement has been taken into account in the costings.

131. The A12 widening scheme, discussed above, would provide capacity for the additional traffic on the A12 resulting from the provision of the link road. Funding for complementary local road improvements, including to the Greenstead roundabout in Colchester, would be sought from the developers of the Tendring / Colchester Borders GC. An allowance for that funding is made in the NEAs' viability assessment. The NEAs consider that, in combination, all the proposed road improvements would provide adequate mitigation for the impacts of traffic from the GC. I concur with that view. That is not to say, however, that increased congestion will not occur when all sources of traffic growth, including from the proposed GC, are taken into account.

#### *Rapid transit system*

132. Plan policy SP7 requires the new communities to be planned around a "step change" in integrated and sustainable transport systems. To fulfil that requirement, it is necessary for it to be shown that high-quality public transport services linking each of the proposed GCs to key destinations are capable of being provided. Without that, the GCs would not comply with NPPF's advice that the transport system needs to be balanced in favour of sustainable transport modes, giving people a real choice over how they travel<sup>26</sup>. Moreover, in order to meet that advice and the Plan's policy aspirations, the service must be available from early on in the life of the GCs, both to provide transport for residents without a car, and to influence the travel choices of residents with cars.
133. The NEAs' intention is that the RTS will be the primary public transport service for the proposed GCs. Since June 2018 planning for the RTS has continued, and in July 2019 ECC and their consultants published their report *Rapid Transit System For North Essex – From vision to plan* [EB/079] [hereafter, "Vision to Plan"]. The report firms up a number of issues that had been left open in the previous RTS report<sup>27</sup> which I considered in 2018:
- For the foreseeable future, the RTS will use high-quality buses. The options of using trams or guided buses have been discarded. The possibility of trackless trams (a technology currently on trial in China)

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<sup>26</sup> 2012 NPPF, para 29

<sup>27</sup> *The North Essex Rapid Transit Study* [EB/066]

being used at an undefined point in the future is contemplated, but the Plan does not rely on this.

- Four RTS routes have been devised, respectively linking the Tendring / Colchester Borders GC to Colchester town centre and the Park and Ride site north of Colchester (Route 1); linking the Colchester / Braintree Borders GC to Colchester town centre and providing connections to Route 1 (Route 2); linking the West of Braintree GC eastwards to Braintree and westwards to Stansted airport (Route 3); and linking Colchester / Braintree Borders GC to Braintree, thereby joining up Routes 2 & 3 (Route 4).
- Options for the four routes have been developed, identifying alternative alignments for, and the degree of segregation of, each route section.
- Capital costs and passenger and revenue forecasts for each route have been developed, and proposed timescales for the introduction of each route have been established.
- Capital funding for RTS Route 1 has been secured from the Housing Infrastructure Fund.

134. Notwithstanding concerns expressed about the feasibility of some of the proposed alignments and their effects (including on other road users, on-street parking and residential amenity), I consider that the route section options have been worked up in sufficient detail to demonstrate that a bus-based RTS with priority over other traffic for much of its length could, in principle, be provided along the routes proposed in Vision to Plan. However, important questions remain about three central aspects of the RTS proposals, which I consider in turn below.

135. **Capital cost estimates** were developed for each RTS route for both “lower-investment” and “higher-investment” scenarios, using standard assumptions based on section lengths and degree of segregation from other traffic. For Routes 1, 2 & 3, Table 5-1 in Vision to Plan shows that the lower-investment scenario produces RTS end-to-end journey times between 26% and 37% longer than journey times in the higher-investment scenario. Section 5.5 of Vision to Plan comments that the greater capital investment in the higher-investment scenario would deliver higher patronage, higher revenue, lower operating costs, and higher mode shares for RTS both on and off the GCs, compared with the lower-investment option.

136. I agree with that analysis. Even in the higher-investment scenario, it is by no means clear that the forecast end-to-end journey times for the RTS

routes would offer any significant advantage over car journey times in current peak traffic conditions, while in current off-peak conditions the car would almost certainly be quicker for many journeys. In the lower-investment scenario, it is likely that the RTS would be considerably slower than the car for most if not all journeys, at all times of day. In this context, I consider that only in the higher-investment scenario would the RTS have any prospect of meeting Plan policy SP5's aspiration for sustainable modes of transport that can compete effectively with private vehicles, and of giving people a real choice over how they travel, as the NPPF advises.

137. Vision to Plan gives higher- and lower-bound capital costs for the higher-investment scenario, with the lower bound representing the base cost and the higher bound representing the base cost plus a 44% contingency allowance. When benchmarking the capital costs of the RTS routes against two similar schemes elsewhere, Vision to Plan used the midpoint between the lower and higher bounds. The corrected table in the NEAs' post-hearing note [EXD/082] indicates that, for the higher-investment scenario, those midpoint costs are comparable with the £4.6M/km out-turn costs for the Bristol Metrobus scheme, but significantly lower than the £5.5M/km out-turn costs for the Leigh-Salford busway.
138. This benchmarking exercise does not present the full picture, however, because Vision to Plan's out-turn costs for the comparator schemes do not allow for inflation since those schemes were completed, meaning that they do not provide a like-for-like comparison at current cost levels. Credible figures based on an assumed civil engineering inflation figure of 3.5% per annum produce inflation-adjusted out-turn costs of £5.3M/km for Bristol and £6.6M/km for Leigh-Salford, both substantially higher than the midpoint costs of the North Essex higher-investment scenario.
139. In hearing statements reference was made by way of comparison to other RTS schemes, including Fastrack in Kent, Fastway in Sussex and the Belfast Glider system. In some cases these indicate higher per-km costs than for the comparator schemes in Vision to Plan, and other cases lower costs. Taken as whole, these references indicate that the inflation-adjusted out-turn costs of the comparator schemes used in Vision to Plan provide a reasonable sense-check for the RTS cost estimates.
140. Moreover, the costs given for the RTS schemes do not include the cost of structures such as a bridge over the railway at the Colchester / Braintree Borders GC, or the cost of any necessary land acquisition.
141. All these points lead me to the view that the capital costs given for the RTS in Vision to Plan need to be treated with caution. At the very least, the upper-bound costs for the higher-investment scenario should be used in

carrying out viability assessment. Those upper-bound costs, rather than the mid-point costs, represent a realistic comparison with the inflation-adjusted costs of the comparator schemes used in Vision to Plan<sup>28</sup>. Even then, it may well be that for Routes 2 and 3 they underestimate the likely capital cost of the RTS, given that they exclude the costs of structures and land acquisition, and I have no clear evidence on what proportions of the comparator scheme out-turn costs relate to structures and land acquisition.

142. Somewhat different considerations apply to Route 1, since the capital costs for that route were subject to further refinement during the preparation of ECC's HIF bid. As a result, I have a reasonable degree of confidence that the upper bound of the higher-investment scenario is likely to reflect the full capital cost of Route 1.
143. As regards **timing of provision**, Vision to Plan envisages that the RTS routes will be developed on a phased basis. That is a realistic approach, given the scale of the project and the fact that the timing of expected development varies at each GC.
144. However, although Table 5-6 in Vision to Plan indicates that RTS Route 4 will be developed between 2034 and 2051, no capital funding for Route 4 is identified in the NEAs' viability appraisals, and there is no specific evidence that it is available from other sources. Consequently, it has not been shown that Route 4 is deliverable.
145. **Commercial viability** is considered in sections 5.2 to 5.4 of Vision to Plan. Section 5.3 makes generally reasonable assumptions about operating costs, including service frequencies and leasing costs for high-quality vehicles to operate the services.
146. Section 5.2 derives revenue estimates for each route, based on demand forecasts which in turn are based on the outputs from a multi-modal transport model. It is likely that a more refined model using more up-to-date survey data would have produced more accurate results. Nonetheless, I consider that the method used has produced demand forecasts that are adequate for the purposes of demonstrating commercial viability at this stage of planning for the RTS.
147. However, I have concerns about the assumptions on the level of investment in the RTS which inform the revenue estimates. As the NEAs' response to my clarification question 3 in EXD/075 makes clear, in section 5.2 the "higher-investment" revenue forecasts for 2033 are based on an

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<sup>28</sup> Per-km upper-bound costs for the higher-investment scenario are given in EXD/082, Table 2.

“aspirational” level of capital spending: only the “lower-investment” forecasts reflect the expected level of investment by 2033.

148. The NEAs go on to say in EXD/075 that “the extent of investment in Routes 1, 2 and 3 is likely to lie between those two levels”. But no clear evidence is given to support that statement. It would be imprudent to rely, for example, on the prospect of Government grant funding without specific evidence that it is likely to be forthcoming.
149. Of greater concern is that the revenue forecasts for Route 3 are based on the assumption that a significant proportion of demand will come from proposed developments in the former emerging Uttlesford Local Plan: the Easton Park GC and the part of West of Braintree GC in Uttlesford district<sup>29</sup>. For the reasons given in paragraphs 18-20 above, this is not a reliable assumption. As a result, I can have no confidence that Route 3 is deliverable.
150. In section 5.4.1, Vision to Plan makes it clear that an element of “pump-priming” should be assumed to be necessary, both to support the RTS services when they are first introduced, and to subsidise traditional bus services at the very early stage of GC development. Although a modest annual allowance is made for “investment in early phase public transport” in the NEAs’ viability appraisals for each of the GCs, I have seen no clear evidence that it is sufficient to meet those purposes.
151. Drawing all these points together, I find that there is sufficient evidence to demonstrate that construction of the RTS is physically feasible. However, it has not been demonstrated that Routes 3 and 4 are deliverable in financial terms. It may well be that even the upper-bound estimates in Vision to Plan’s higher-investment scenario underestimate the likely capital costs of Routes 2, 3 and 4, and there is some uncertainty over the revenue forecasts for Routes 1 and 2. There is no clear evidence to show that the NEAs’ viability appraisals make adequate provision for “pump-priming”.
152. I consider the consequences of these findings in the section on viability below.

#### *Marks Tey station*

153. The NEAs have investigated the possibility of relocating Marks Tey railway station to a more central position in the proposed Colchester / Braintree Borders GC. However, Network Rail advised them in July 2019 that, in

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<sup>29</sup> See EXD/089.

view of the very high costs that would be involved in relocating the station, enhanced access and improvements to the existing station should be explored and developed. An appropriate allowance for this purpose has been made in the viability appraisal for the GC.

#### *Water supply and waste water infrastructure*

154. The North Essex Integrated Water Management Strategy follows a staged approach to planning for water supply and waste water treatment for the proposed GCs. The existing Stage 1 identifies a series of options, which would then be refined in Stage 2 to determine specific solutions for each GC. This is a conventional approach and I see no reason to consider that it is inappropriate here.
155. In a statement of common ground, the NEAs, Anglian Water and the Environment Agency agree that modifications to Plan policies are needed to require the necessary water supply and waste water treatment capacity to be provided before any dwellings are occupied at the proposed GCs. However, in order to show that the proposed GCs are deliverable, it is also necessary to establish whether or not that provision is capable of being funded.
156. There are statutory responsibilities on the water supply companies (Anglian Water and Affinity Water) to plan to meet future growth in demand, and on Anglian Water to provide waste water treatment capacity. Allocations are made in the NEAs' viability assessment to fund connecting infrastructure at each of the proposed GCs. However, those allocations are inevitably subject to a degree of uncertainty given that specific solutions have yet to be identified. I consider the consequences of this in the section on viability below.

### **Deliverability of the proposed GCs**

#### ***Housing build-out rates***

157. In IED/011 I reviewed the evidence then before me on housing build-out rates and concluded that, while it is not impossible that one or more of the GCs could deliver at rates of around 300 dwellings per annum [dpa], it would be more prudent to plan, and carry out viability appraisal, on the basis of an annual average of 250dpa.
158. The NEAs subsequently prepared the topic paper *Build out rates in the Garden Communities*, July 2019 [EB/082], which concludes that adopting that 250dpa figure would be overly cautious based on the evidence

available and the context and attributes of the Garden Communities themselves. In the NEAs' view, what they regard as an achievable, albeit conservative, build-out rate of 300dpa is appropriate for the purposes of modelling, although they consider that this figure could be substantially increased over time.

159. From the literature review of other reports on build-out rates, EB/082 identifies a number of factors which promote higher delivery rates. These include the size of the development (bigger sites tend to achieve higher delivery rates), the ability to diversify the type, size and tenure of the dwellings provided, and the strength of the local housing market. I agree that all these factors would tend to promote higher delivery rates at the proposed GCs.
160. An important section of EB/082 focusses on the NLP report *Start to Finish* (November 2016), which I considered in IED/011. *Start to Finish* is the most comprehensive study of actual, achieved build-out rates available to me. It found that the 10 greenfield sites providing more than 2,000 dwellings that were studied delivered around 170dpa on average, with substantial variation around that mean figure.
161. EB/082 points out that the delivery periods for most of the sites studied in *Start to Finish* include the period of deep economic recession which began in 2007/08. The recession led to a steep decline in housebuilding nationally from which it took several years for significant recovery to begin. It is reasonable to infer that the average build-out rates identified in *Start to Finish* might have been affected by these events, which went well beyond the normal fluctuations of the business cycle.
162. However, NLP have carried out further analysis of build-out rates excluding the five years from 2008 to 2013, thereby effectively excluding the effects of the recession. (It is reasonable to regard fluctuations outside this exceptional period as typical of the normal business cycle.) NLP's analysis showed that the average build-out rate on the same 10 greenfield sites of 2,000 dwellings or more was 184dpa. That is still well below the 250dpa rate which I recommended in IED/011 as a prudent basis for planning, let alone the 300dpa rate which the NEAs now regard as a conservative figure.
163. NLP also analysed the pre-recession period. Only two greenfield sites of more than 2,000 dwellings were available to inform that analysis: too small a sample from which to draw any reliable conclusions. For all sites of 500 dwellings or more, however, the average pre-recession delivery rate was 116dpa, compared with 109dpa for the whole period including the recession and post-recession.

164. NLP's further analysis, therefore, demonstrates that while the recession and its aftermath had some effect on build-out rates, the effect was not that great. Average build-out rates on comparable sites increase only a little if the effects of the recession are excluded.
165. The Homes & Communities Agency [HCA] *Notes on Build out rates from Strategic Sites*, which is also referenced in EB/082, claims that "forecast trajectories for the very largest sites (say 4,000 units+) may be in the range of 300-500[dpa]". However, the evidential basis for this claim is unclear, despite the fact that the report is based on actual build-out rates. Only one of the four developments of 4,000 dwellings or more for which average figures are given achieved an average delivery rate of more than 300dpa (in fact, 321dpa), with the other three ranging between 205dpa and 281dpa.
166. The HCA report also gives average actual build-out figures for eight developments of between 2,000 and 4,000 dwellings. According to those figures, only one of the eight achieved an average delivery rate of more than 300dpa. The next highest figure was 234dpa, while at the other end of the scale, four delivered less than 100dpa on average. Taking all this into account, I consider that the findings of the HCA report do not contradict those of the more recent NLP analysis, nor do they support an average delivery rate of 300dpa at the proposed GCs.
167. EB/082 also includes a table taken from the Letwin *Independent Review of Build Out* (June / October 2018), showing average build-out rates on 15 sites ranging between 572 and 86 dpa. However, unlike *Start to Finish*, these averages combine actual and forecast delivery rates. Examination of the detailed annual delivery figures for 12 of those 15 sites<sup>30</sup> shows that there are more than twice as many years for which forecast rates are given, than years for which actual build-out rates are given.
168. Three of those 12 sites are high-density brownfield developments in London, very different in character from the proposed GCs. On the other nine, there were more than twice as many years in which actual delivery levels fell below 250dpa, than years in which they exceeded 300dpa. Even after allowing for some inaccuracy in the Letwin figures, for example at the Great Kneighton site, they show that, for the relevant sites studied, build-out rates of 250dpa or less have been achieved considerably less often than rates of 300dpa or more.

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<sup>30</sup> The Letwin *Independent Review of Build Out Rates, Draft Analysis* (June 2018), pp AX38-AX49. Letwin does not provide annual delivery figures for the other three sites.

169. EB/082 suggests that the three sites on the Bicester ring road which were assessed by Letwin should be viewed as phases of a single, larger development for the purposes of calculating build-out rates. But only two of those sites are close to one another: the other is on the opposite side of the town. Moreover, I have no clear evidence on the extent to which the three sites have delivered housing simultaneously, and the only one for which actual delivery figures are given by Letwin has achieved an average rate of only about 140dpa.
170. The two adjacent sites in Colchester referenced in EB/082 have delivered some 260-270dpa, but over a period of only two years. Examples of other developments given by other participants, including at Chelmsford, Aylesbury and Didcot, provide no clear evidence that average delivery rates of more than 250dpa can be sustained over a long period. Nor is there any robust evidence before me to demonstrate that the use of modern methods of construction significantly boosts delivery rates.
171. EB/082 draws on examples of build-out rates at other strategic-scale developments in Milton Keynes, at Otterpool Park in Kent and at Harlow and Gilston Garden Town. Most of these are expected to achieve build-out rates of 300dpa or more, and in some cases considerably more. However, almost all those figures are future projections rather than actual build-out rates. The Milton Keynes projections, which were endorsed by the Local Plan Inspector, extend only over the next 10 years, in contrast to the much longer timescales of the proposed GCs.
172. This is not to suggest that projected delivery figures on sites elsewhere should be disregarded when assessing the likely rate of delivery at the proposed GCs. But in my view they carry considerably less weight than evidence of actual achieved delivery, when considering the GCs' delivery prospects and their financial viability. It would be unwise to embark on these very long-term projects on the basis of delivery assumptions that have not been shown to be achievable in practice.
173. EB/082 draws attention to the significantly higher average housing delivery rate in Milton Keynes achieved by the Development Corporation [MKDC] from 1971 to 1992, compared with the average rate since its dissolution. But, given the very different social, economic and institutional arrangements prevailing at that time, it would be misleading to assume that the past achievements of MKDC and other development corporations would be replicated at the proposed GCs. Nor is there yet any clear evidence that the Ebbsfleet Development Corporation, established by the government in 2015, will be successful in achieving the high delivery rates projected for it.

174. In conclusion, evidence shows that some large housing sites are capable of delivering 300 dwellings or more in a single year, and in some cases for a number of years in succession. But I find that there is no evidence to support the view that the proposed GC sites are capable of delivering at that annual level consistently, throughout the normal peaks and troughs of the business cycle, over the decades that it will take to build them. Over that timescale, the best evidence on likely delivery rates at the proposed GCs remains *Start to Finish's* annual average figure (adjusted to exclude the effects of the 2007/08 recession) of under 200dpa for greenfield sites of more than 2,000 dwellings.
175. It is appropriate to adjust that figure upwards to 250dpa to take account of the fact that the GCs meet most of the factors identified in EB/082 which promote higher delivery rates. But it would be imprudent to base the Plan's housing trajectory, or the viability appraisal of the proposed GCs, on any higher figure.

### ***Lead-in times***

176. None of the evidence I have seen or heard since June 2018 leads me to alter my view, set out with reasons in IED/011, that, in general terms, it is reasonable to assume that the planning approval process would allow housing delivery at any GC to start within four or five years from the adoption date of the plan (or plan revision) which establishes the GC in principle. The NEAs' latest housing trajectory [EXD/070], which shows housing delivery at the Tendring / Colchester Borders and West of Braintree GCs beginning in 2024, is broadly consistent with this finding, albeit that the trajectory will need to be kept under review.
177. However, I advised in IED/011 that the four- to five-year timescale could alter depending on how long it takes to put the necessary infrastructure in place. In this context the NEAs' trajectory now anticipates that delivery of housing at the Colchester / Braintree Borders GC will start in 2029, after completion of the A12 widening and A120 dualling schemes (assuming the latter is included in RIS3).

### ***Employment provision***

178. Policy SP7(vi) requires that each proposed GC should provide and promote opportunities for employment within each new community and within sustainable commuting distance of it. In that context I observed in

IED/011 that it is surprising that the GC policies contain no specific figures for the amount of employment land or floorspace to be provided at each of the GCs. I acknowledged the difficulty of predicting requirements for employment land and floorspace at this early stage of planning, but advised that indicative requirement figures could be set which could then be reviewed each time the Plan itself is reviewed.

179. In response, the NEAs commissioned Cebr to produce the report *Employment provision for the North Essex Garden Communities* [EB/081]. It sets out estimates of employment floorspace and employment land requirements for each GC. At my request, Cebr subsequently provided adjusted requirement figures for the West of Braintree GC that are commensurate with the GC land within Braintree district only<sup>31</sup>.
180. EB/081 forecasts employment numbers at each GC for three future dates – 2033, 2050 and at completion of construction, estimates the breakdown of those numbers by employment sector, and then follows HCA guidance on employment densities to convert them into floorspace and finally employment land requirements. In principle this is a sound methodology, as long as the forecasts of employment numbers and the sectoral breakdown estimates are themselves sound.
181. The employment number forecasts are based on two scenarios, which produce almost identical results. In the “reference case” scenario, total employment at each GC is assumed to be exactly equal to the number of completed dwellings at each forecast date. This is a highly ambitious assumption, which exceeds both the requirements of policy SP7(ii) and the more demanding goal of the NEGC Charter’s Principle 3 to provide access to one job per household within each new GC or within a short distance by public transport.
182. The “investment case” scenario draws on work in an earlier report by Cebr, *Economic Vision and Strategy for the North Essex Sub-Region* (August 2018), commissioned by NEGC Ltd. In this scenario, the employment-to-population ratio in North Essex as a whole (including at each GC) gradually increases so that by 2036 it converges on the ratio for a set of comparator areas, and remains constant thereafter.
183. The comparator areas are all located in what Cebr describe as an “arc of prosperity” to the north, west and south-west of London. Both employment-to-population ratio and GVA per capita in North Essex are currently well below the average for the comparator areas. Cebr’s investment case scenario therefore essentially depends on the success of

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<sup>31</sup> For the reasons given in paras 18 to 20 above

an ambitious economic development programme to raise North Essex's economic performance to match that of the comparator areas.

184. Cebr's projected employment figures for the GCs are similar to, and indeed in some cases somewhat lower than, those in the upper end of the range estimated in a report by Cambridge Econometrics and SQW: *North Essex Garden Communities Employment & Demographic Studies* [EB/009], published in April 2017. Having said that, EB/009's upper-end estimates are based on similarly ambitious assumptions as regards economic development, and I was shown no evidence of any development programmes that have achieved that degree of improvement in economic performance.
185. Economic forecasting is notoriously difficult, and especially so over the long development timescales of the proposed GCs. The ambitions for economic growth that inform the Cebr forecasts may or may not be realised in practice. But in my view it would be wrong, particularly at this early planning stage, to constrain the potential for achieving that level of growth by limiting the availability of employment land. Consequently, I consider that it would be appropriate to use the figures in EB/081<sup>32</sup> as the basis for setting employment land requirements for the GCs in the Plan, with the proviso that the requirements for all the GCs are reviewed each time the Plan and/or the Strategic Growth DPDs are reviewed, to ensure that they continue to reflect up-to-date evidence.
186. In reaching that view I have had regard to the representations about the way in which Cebr arrived at their sectoral breakdown of the employment numbers for each GC. While in most cases the sectoral shares at the GCs reflect those for the comparator areas, there are a few apparent anomalies, most notably the 30% share for information and communication activities forecast for the Tendring / Colchester Borders GC. But any such anomalies have only a small effect on the calculation of the overall employment land requirements for each GC.

### ***Delivery mechanisms***

187. The NEAs' intention is that the Plan should be "delivery model-blind": that is to say, it should make no specific requirements about whether development of the proposed GCs is led by the public sector, the private sector, or a partnership between the two. In principle that is a sound

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<sup>32</sup> Subject to the West of Braintree adjustment discussed above.

position which allows for appropriate flexibility at this early stage of planning the GCs.

188. In IED/011 I advised that submitted Plan policy SP7 should be modified to remove the reference to "sharing risk and reward". That does not mean that I consider it would be unlawful for the public and private sectors voluntarily to enter into an arrangement in which they would share the risks and rewards of development. However, for the reasons I gave in IED/011, it would be inappropriate and potentially unlawful to make that a policy requirement.
189. The *North Essex Garden Communities Charter* envisages that Local Delivery Vehicle(s) [LDVs], accountable to the NEAs with both private and public sector representation, will be responsible for leading the delivery of the proposed GCs. Three LDVs, together with a holding company known as NEGC Ltd, have been incorporated in readiness to perform this role. Subsequently, in response to consultation on the *New Towns Act 1981 [Local Authority Oversight] Regulations*, the NEAs indicated an interest in the formation of a locally-led new town development corporation, overseen by the NEAs, to perform the lead role.
190. At the hearings the NEAs explained that the LDVs (or a future locally-led development corporation) are in effect being held in reserve to lead the delivery of the GCs, should it become apparent through the planning application process that the private sector is unable to do so in accordance with the Plan's policies.
191. The role of the Plan is to set out policies and criteria to guide the further planning of the proposed GCs, and to provide part of the framework against which planning applications to develop the GCs would be assessed. Provided that there is evidence that the GC proposals are justified and are capable of being delivered, it is not necessary for the Plan to specify that any particular delivery model must be followed.

## **Viability**

### *National policy and guidance*

192. At paragraph 173 the 2012 NPPF advises that, to ensure viability, the costs of any requirements likely to be applied to development should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing landowner and willing developer. It also cautions that the sites and scale of development in the plan should not be subject to such a scale of policy obligations and policy burdens that their ability to be developed viably is threatened.
193. The PPG on viability makes it clear that understanding Local Plan viability is critical to the overall assessment of deliverability. The plan's vision for the area should be presented in the context of local economic conditions and market realities. This should not undermine ambition for high-quality design and wider social and environmental benefit, but such ambition should be tested against the realistic likelihood of delivery. Viability assessment should not compromise the quality of development but should ensure that the vision and policies are realistic and provide high-level assurance that plan policies are viable<sup>33</sup>.
194. As has been seen in the foregoing sections, the GC proposals in the Plan are predicated on their meeting policy requirements which reflect garden city principles. In this way the Plan seeks to achieve sustainable development in accordance with national planning policy<sup>34</sup>. The ASA – which provides the principal justification for the inclusion of the GCs in the Plan's spatial strategy – is based on the assumption that the Plan's policy requirements for the facilities and infrastructure needed to support them will be met. Demonstrating that the GCs can be viably delivered in accordance with the Plan's policies is, therefore, critical to establishing their overall deliverability.
195. The PPG also advises that there is no single approach for assessing viability, and sets out a number of principles that viability assessments should follow, including evidence-based judgment, collaboration, transparency and consistency. Plan-makers should not plan to the margin of viability, but instead should allow for a buffer to respond to changing markets and to avoid the need for frequent plan updating<sup>35</sup>.

### *Viability assessments produced for the examination*

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<sup>33</sup> PPG Ref ID 10-001-20140306 & 10-005-20140306

<sup>34</sup> See paras 12-13 above.

<sup>35</sup> PPG Ref ID 10-002-20140306, 10-004-20140306 & 10-008-20140306

196. When I conducted the 2018 examination hearings the most recent assessment of the GCs' financial viability before me was the April 2017 Viability Assessment by Hyas ["the 2017 Report"]. In IED/011 I found that it had not demonstrated that the GCs proposed in the submitted Plan were financially viable, and I made a number of points about how any future viability assessment should be carried out.

197. The NEAs commissioned Hyas to carry out further viability work on the GCs, which is reported in the Viability Assessment Update (June 2019, EB/086) ["the 2019 Update"]. This report drew on further work by AECOM and Gleeds [EB/087 & EB/088] to define, and provide phasing and costs for, the infrastructure needed to support the GCs.

198. At my request, Hyas then carried out additional work to take account of two factors:

- Unlike the 2017 Report, the 2019 Update assessed the West of Braintree GC as a cross-boundary site, including land in Uttlesford district. For the reasons given in paragraphs 18-20 above, however, it cannot be assumed that the Uttlesford land would form part of the GC. It was therefore necessary for Hyas to revise their assessment of the West of Braintree GC to exclude the land in Uttlesford district.
- Despite my findings on build-out rates in IED/011, the 2019 Update assessed all three GCs on the basis that they would deliver 300 dwellings a year [dpa] on average. I therefore asked for further appraisals of all three GCs assuming average delivery of 250dpa.

Hyas's additional work forms Supplementary Information to their 2019 Update (November 2019, EXD/058) ["the 2019 Supplementary Information"].

199. The NEAs now rely principally on the 2019 Update and Supplementary Information to demonstrate the viability of the proposed GCs. Separate viability assessments were submitted by NEGC Ltd, and by promoters of the Colchester / Braintree Borders and West of Braintree GCs. Below I consider, first, the 2019 Update and Supplementary Information, and then the other viability appraisals.

200. In considering the appraisals, I am mindful of the PPG's advice that evidence should be proportionate and should demonstrate viability in a broad sense<sup>36</sup>. While the PPG also calls for greater detail when assessing

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<sup>36</sup> PPG ID Ref 10-005-20140306

strategic sites (such as the GCs) which require high infrastructure investment, at this early stage of planning many costs and values cannot be known exactly. What is important is not that the appraisals achieve an unrealistically high degree of precision or certainty, but that they provide a robust indication that the proposed GCs are capable of being viably delivered.

#### *Competitive return to a willing landowner*

201. The PPG advises that a competitive return for the landowner is the price at which a reasonable landowner would be willing to sell their land for the development. The price will need to provide an incentive for the landowner to sell in comparison with the other options available, which may include its current use value or its value for a realistic alternative use<sup>37</sup>. Most of the land in each proposed GC's area is currently in agricultural use, with a current use value of around £10,000/acre.
202. Many participants suggested that a price of around £100,000/acre is the minimum needed to provide a competitive return. They included promoters of two of the three GC sites and others with knowledge of the local land market. While there is only limited evidence to support that figure, it appears likely that it is indicative of current market expectations. Care needs to be taken not to base viability assessment on a land price which is too far below such expectations, if landowners are to be persuaded to sell.
203. On the other hand, as a RICS research document<sup>38</sup> points out, basing land values on comparable evidence without adjustment to reflect policy requirements can lead to developers overpaying for land. This may in turn compromise the achievement of the policy requirements, if the developer then seeks to recover the overpayment by seeking a reduction in their planning obligations.
204. Taking these points and the other relevant evidence into account, there seems little doubt that a land price of around £100,000/acre on any of the proposed GC sites would provide sufficient incentive for a landowner to sell. In my view, it is also reasonable to assume that a price below £100,000/acre could be capable of providing a competitive return to a willing landowner, when account is taken of the necessarily substantial requirements of the Plan's policies.
205. In the absence of clear local evidence, it is difficult to estimate the minimum land price that would constitute a competitive return. The price

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<sup>37</sup> PPG ID Ref 10-015-20140306

<sup>38</sup> RICS, *Financial Viability Appraisal in Planning Decisions: Theory and Practice*, April 2015

achieved for development land in other places and in other circumstances is unlikely to provide a reliable guide. In my judgment, however, it is extremely doubtful that, for the proposed GCs, a land price below £50,000/acre – half the figure that appears likely to reflect current market expectations – would provide a sufficient incentive to a landowner. The margin of viability is therefore likely to lie somewhere between a price of £50,000 and £100,000 per acre.

### *Hyas's 2019 Update and Supplementary Information*

206. Like Hyas's 2017 Report, the 2019 Update follows the residual valuation method. Its methodology is similar to that of the 2017 Report, but with a number of changes to the inputs and assumptions. It presents summaries and cashflows for three different scenarios:

- Reference scenario (no grant, no inflation) – all three GCs;
- Grant scenario (including HIF grant) – Colchester / Braintree Borders and Tendring / Colchester Borders GCs;
- Inflation scenario – all three GCs.

207. Each of these scenarios was subject to sensitivity testing of contingency allowances at 10%, 20% and 40% on certain infrastructure items. The Supplementary Information is presented for the same ranges of scenarios and contingency allowances as the 2019 Update.

### *Land purchase*

208. The 2019 Update and Supplementary Information make appropriate allowances for the cost of interest on land purchase. These were omitted from the 2017 Report.

209. The assumption is made that the land for the GCs is purchased in tranches throughout the development period, each tranche being purchased two years before it is required for development. This is a necessarily simplified assumption for the purposes of viability appraisal, and it may well be that the actual pattern of land purchases is more irregular than this. Nonetheless, the assumption is justified by the evidence that phased draw-down of land is common practice in large-scale development schemes.

210. Accordingly, it is appropriate for the 2019 Update and Supplementary Information to assume that land payments are staged throughout the development period. In the Reference and Grant scenarios those payments are set at current values, consistent with the approach taken to all other costs and returns. I consider the Inflation scenarios separately below.

### *Infrastructure costs*

211. I consider that the base infrastructure costs (exclusive of contingency allowances) that are used in the 2019 Update and Supplementary Information are generally appropriate, except in the case of the RTS.
212. For the reasons given above in my consideration of the RTS, I consider that at the very least the upper-bound costs of the higher-investment scenario in the RTS Vision to Plan document should be used for the purposes of viability assessment. Even those upper-bound costs may well underestimate the likely capital cost of RTS Routes 2, 3 and 4. However, the 2019 Update and Supplementary Information take the lower-bound costs of the higher-investment scenario as the base costs for the RTS, to which contingency allowances of 10%, 20% or 40% are applied, as discussed below.
213. The upper-bound costs for the RTS in Vision to Plan are 44% higher than the lower-bound costs. Consequently, the base costs allowed for the RTS in the 2019 Update and Supplementary Information fall a long way short of the minimum that I consider appropriate, even after taking account of the fact that the costs in Vision to Plan include a 10% allowance for professional fees.

### *Contingency allowances*

214. In the 2019 Update and Supplementary Information's 10% contingency scenarios, a 10% contingency allowance applies to all infrastructure items. In the 20% and 40% contingency scenarios, the higher contingency allowance is applied only to the base costs of those infrastructure items in the Scheme Wide Other Itemised category (transport and utilities), with the contingency allowance on the other items remaining at 10%. This approach appropriately reflects the fact that it is the items in that category which are most likely to be subject to unknown additional costs.
215. In considering what is an appropriate level of contingency allowance, it is necessary to recognise that the Section 1 Plan represents the initial stage of planning for the proposed GCs, setting out broad parameters and high-level infrastructure requirements for them. The exact amount of development that each GC will contain, and the precise nature and scale of its infrastructure requirements, will be established through Strategic Growth DPDs and masterplans which have yet to be drawn up.
216. In general terms, the level of contingency allowance that is appropriate varies according to the stage of planning that a development project has reached. Costs are likely to be underestimated (a phenomenon known as

“optimism bias”) if an adequate allowance for contingencies is not made at each stage. In the early stages, when the project is less well-defined and there is greater uncertainty over the factors influencing the eventual outturn costs, a higher level of contingency allowance is usually appropriate. As planning progresses and uncertainties reduce, the level of contingency allowance may be reduced accordingly.

217. The Treasury's *Supplementary Green Book Guidance* on optimism bias (April 2013) advises that an upper-bound optimism bias allowance of 44% for capital expenditure on standard civil engineering projects provides a first starting point and reasonable benchmark. It reflects the average historic optimism bias which research found to occur at the outline business case stage.
218. While the Green Book guidance specifically applies to public-sector commissions, in my view similar considerations apply at the stage of planning that the GCs have reached. At this early stage, and particularly when account is taken of their large scale and very long build periods, it is inevitable that many uncertainties remain over the infrastructure requirements of the proposed GCs. As discussed above<sup>39</sup>, for example, decisions have yet to be made on which of the options for water supply and waste water treatment will be pursued at each GC. Nor has there been any significant analysis of the risks to infrastructure delivery.
219. Moreover, as I have set out above, the base costs allowed for the RTS in the 2019 Update and Supplementary Information fall well below the minimum figure I consider necessary. Adding a 40% contingency allowance to the base costs for the RTS would only bring it up to around that minimum figure, with no significant margin for any additional costs that may well arise, such as for structures or land acquisition. The RTS costs represent a substantial proportion of the costs in the Scheme Wide Other Itemised Infrastructure category.
220. For all these reasons, I consider that at this stage of planning it would be reasonable to expect a contingency allowance of at least 40% to be applied to the items in the Scheme Wide Other Itemised category. Any lower figure would, in my view, provide insufficient reassurance that all the necessary infrastructure requirements of the proposed GCs would be met.

#### *Rate of housing delivery*

221. In the light of my conclusions on build-out rates in paragraphs 157-175 above, I consider that viability appraisal of the proposed GCs should be

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<sup>39</sup> At paras 106 and 154-156

carried out on the basis of an average annual housing delivery rate of 250dpa. Basing the appraisal on a higher average rate would not provide a reliable indication of viability.

#### *Interest on strategic investment borrowing*

222. As in 2017, the 2019 Update and Supplementary Information assume that all borrowing for land purchase and infrastructure provision is funded at an interest rate of 6%. In my experience this is a fairly common assumption in local plan viability assessments. Having had regard to all the relevant submissions and evidence, I consider there is a good prospect that a master-developer for the proposed GCs would be able to obtain finance at that rate. The NEAs are confident that this would not give rise to any issue of state aid compliance. The state aid complaint that was submitted to the European Commission in February 2020 concerns other aspects of Government funding for the GCs and its outcome is not yet known.

#### *Grant scenarios*

223. The Grant scenarios in the 2019 Update and Supplementary Information assume that HIF grants are available to fund transport infrastructure for two of the three proposed GCs: the A120/A133 link road and RTS Route 1 for Tendring / Colchester Borders GC, and the A12 realignment between junctions 24 and 25 for the Colchester / Braintree Borders GC. Both HIF grants have now been confirmed.

#### *Inflation scenarios*

224. The 2017 Hyas Report made no allowance for inflation in its modelling, and in IED/011 I endorsed that approach. However, the 2019 Update and Supplementary Information include Inflation scenarios for all three GCs.

225. The assumptions made by Hyas in modelling the Inflation scenarios are that building costs and property sale values increase at an annual rate of 4%, while strategic infrastructure costs increase at 3.5% annually. This produces a small additional margin year-on-year, but over the GCs' long development periods it results in dramatic increases in residual land values [RLVs], up to 10 or even 20 times the RLVs in the corresponding non-inflation scenarios.

226. The PPG advises that current costs and values should be considered when assessing the viability of plan policy. Policies should be deliverable and should not be based on an expectation of future rises in values for at least the first five years of the plan period. This will help to ensure realism and

avoid complicating the assessment with uncertain judgments about the future<sup>40</sup>.

227. The Harman Report *Viability Testing Local Plans*<sup>41</sup>, while not Government policy, also provides helpful advice on this topic. It says that the most straightforward way to assess plan policies for the first five years is to work on the basis of current costs and values, and that

for the period beyond the first five years (ie. the 6-15 year period) a more flexible approach may be taken, recognising the impact of economic cycles and policy changes over time. Forecasting things like house prices or costs is notoriously difficult over the shorter term, and subject to wider inaccuracies over the medium and longer term. The best a council can realistically seek to do is to make some very cautious and transparent assumptions with sensitivity testing of the robustness of those assumptions.

228. Neither the PPG nor the Harman Report consider the approach to assessing viability beyond 15 years. But the latter's advice about the uncertainty and difficulty of forecasting in the 6- to 15-year period applies with even greater force to attempts to forecast price and cost changes over the much longer timeframes of the proposed GC developments. Hyas themselves acknowledge in the Update that there are difficulties inherent in forecasting, especially over such long timeframes, and that there are no potential references or market projections published over such long-term periods.

229. Even if the average annual growth in house prices over the last 20 years is significantly greater than the 4% rate assumed in the Inflation scenarios, that is no guarantee that an average 4% growth rate will be sustained throughout the decades that it would take to build the proposed GCs. Similar uncertainty applies to changes in building and infrastructure costs. Notwithstanding these substantial uncertainties, Hyas did not carry out sensitivity testing of different potential inflation rates as recommended by Harman.

230. For all these reasons, I consider that the Inflation scenarios do not provide a reliable indication of the viability of the proposed GCs.

### *Conclusions on the 2019 Update and Supplementary Information*

231. For the above reasons, I consider that the Inflation scenarios, the scenarios based on average housing delivery of 300dpa, and the scenarios for the proposed West of Braintree GC including land in Uttlesford district do not

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<sup>40</sup> PPG Ref ID 10-008-20140306

<sup>41</sup> Produced by the Local Housing Delivery Group, June 2012

provide a reliable indication of the viability of the proposed GCs. It is appropriate to consider the viability of the proposed Tendring / Colchester Borders and Colchester / Braintree Borders GCs based on the Grant scenarios, since their associated HIF grants have been confirmed. The Reference scenario is the appropriate basis for considering the proposed West of Braintree GC. Based on my findings above on contingency allowances, in each of these scenarios a contingency allowance of at least 40% needs to be applied to all the items in the Scheme Wide Other Itemised category

232. As noted above, the 2019 Update and Supplementary Information follows the residual valuation method, in which all the costs of development are subtracted from the value of the development in order to arrive at a residual land value. The costs of development include the infrastructure requirements for the GCs, which (in accordance with national policy) appropriately reflect the garden city principles that underpin them. In order to demonstrate the viability of each proposed GC, the residual land value produced by the appropriate assessment scenario must achieve a competitive return to a willing landowner that is above the margin of viability<sup>42</sup>. Should this not be achieved, the viability of the GC will not have been demonstrated.
233. For the proposed Tendring / Colchester Borders GC, the Grant scenario assessment in the 2019 Supplementary Information, based on average delivery of 250dpa with a 40% contingency allowance, gives a residual land value of over £175,000/acre. That is well above the figure that I consider would constitute a competitive return to a willing landowner. This would allow sufficient financial headroom to overcome any concerns about the contingency allowance for the A120/A133 link road, or any additional costs associated with the link road or with RTS Route 1. I therefore consider that the viability of the Tendring / Colchester Borders GC has been demonstrated.
234. For the Colchester / Braintree Borders GC, on the other hand, the Grant scenario assessment, based on average delivery of 250dpa with a 40% contingency allowance, gives a residual land value of only around £24,500/acre. That is well below what I consider to be a competitive return to a willing landowner.
235. For the West of Braintree GC, the Reference scenario, based on delivery of 250dpa with a 40% contingency allowance, produces a residual land value of around £52,000/acre. I consider that this would place the development below or, at best, at the margin of viability.

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<sup>42</sup> PPG ID Ref 10-015-20140306 & 10-008-20140306

### The NEGC viability assessment

236. The viability appraisal submitted by NEGC Ltd covers all three GCs. Unlike the Hyas assessments and those carried out by site promoters, it is not a residual valuation. Instead the price of land at each GC is an input to the appraisal, and the output is a figure for the rate of return on capital invested. In each case the land price was calculated on the assumption that the land and rights required are to be compulsorily acquired.
237. The per-acre land values used in the appraisal are around £24,000 for the West of Braintree GC, £26,000 for the Colchester / Braintree Borders GC, and £39,000 for the Tendring / Colchester Borders GC. In each case this is well below what I consider to be a competitive return to a willing landowner and accordingly it appears unlikely that land could be purchased by agreement at that price.
238. Compulsory purchase order [CPO] powers are available to the NEAs as local planning authorities, and would also be available to a locally-led new town development corporation, should the NEAs establish one. In either case, one of the matters which the Secretary of State is required to take into account when deciding whether to confirm a CPO is whether the purpose for which the land is being acquired could be achieved by any other means. This may include considering the appropriateness of any alternative development proposals put forward by the owners of the land, or any other persons<sup>43</sup>.
239. In a situation where there are landowners and developers prepared to develop each of the GC sites, it appears likely that any proposed CPO would be contested, with the potential for considerable delay and uncertainty, and with no guarantee as to the outcome.
240. In the NEGC appraisal, interest rates are assumed to be 2.5% for land purchase and 3.5% for infrastructure borrowing, well below the 6% rate assumed by Hyas. A statement from Homes England indicates that in recent years they have made £2,500M worth of infrastructure loans at similar rates to developers in order to unlock or accelerate the delivery of large-scale housing projects. However, the loan rate is dependent on the potential borrower satisfying certain defined criteria for creditworthiness and collateralisation. I have no clear evidence that those criteria are capable of being satisfied in such a way as to justify a loan rate of 3.5% for each of the GCs.

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<sup>43</sup> MHCLG, *Guidance on Compulsory purchase process and The Crichel Down Rules* (July 2019), paras 106 & 143

241. Even if the issues of land purchase and interest rates could be resolved, the NEGC viability appraisals also assume average housing delivery at each of the proposed GCs at rates of 300dpa and 500dpa. I consider these to be unsound assumptions, for the reasons set out above.
242. Moreover, while the NEGC appraisals use infrastructure base costs derived from the same source as Hyas (EB/087), they apply a 44% optimism bias allowance to some transport and utility items, but only 10% to others. For the West of Braintree GC nine items<sup>44</sup> receive a 44% allowance, for Colchester / Braintree Borders GC three items, and for Tendring / Colchester Borders one item. No explicit rationale for these distinctions is provided, and it is at odds with my finding that it a 40% contingency allowance should be applied to all the items in the Scheme Wide Other Infrastructure category.
243. In the light of these points, I consider that the NEGC appraisals do not provide a reliable indication of the viability of each of the proposed GCs.

*The viability assessments submitted by the GC site promoters*

244. Some of the assessments submitted by promoters of the GC sites assume average housing delivery rates of 300dpa or above throughout the GCs' development period. For the reasons given above, I consider that reliance cannot be placed on viability assessment based on that assumption.
245. Two viability assessments were, however, provided for average delivery rates of 250dpa. The assessment for the Andrewsfield New Settlement Consortium [ANSC] is for a development including some 8,300 dwellings on land in Braintree district within the broad location of the proposed West of Braintree GC. It includes infrastructure costs based on a per-dwelling figure of around £53,200. There is no detailed explanation of how that figure was arrived at. But when explaining the £51,000 per-dwelling figure used in their earlier appraisal (based on average delivery of 300dpa), the authors of the assessment say that they consider the Hyas infrastructure allowance of £53,000 per dwelling, informed by the Gleeds costs estimates [EB/087] to be reasonable.
246. The Hyas allowance of £53,000 per dwelling was for a 12,500-dwelling scheme including land in Uttlesford district. When assessing a 10,000-dwelling scheme wholly within Braintree district as proposed in the Plan, Hyas used a figure of £57,000 per dwelling, significantly higher than the circa £53,000 figure in the ANSC assessment. Since the Hyas scheme is

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<sup>44</sup> Counting the various phases of the RTS off-site network as one item.

also some 1,700 dwellings larger, this means that its total infrastructure allowance, excluding contingencies, is £570M, as against around £442M for the ANSC scheme.

247. While some of this discrepancy can be explained by infrastructure costs (such as education and community facilities) which vary on a per-dwelling basis, there are also substantial fixed costs, including for transport infrastructure such as the RTS. Without a breakdown of how the ANSC infrastructure allowance was arrived at, it seems likely that it is an underestimate.
248. Of even greater concern is that in the ANSC assessment, infrastructure spending is assumed to occur at a constant annual rate throughout the GC's five-decade build programme. That is an unrealistic assumption, at odds with the phasing in EB/087, which more realistically allocates 100% of many of the large transport and utility infrastructure costs to the first one or two phases of the build programme.
249. In addition, the ANSC assessment applies a contingency rate of 10% to all infrastructure costs. In my view that is wholly inadequate for transport and utility infrastructure, for the reasons discussed above.
250. The other viability assessment said to be based on delivery of 250dpa was prepared for the promoters of the larger part of the Colchester / Braintree Borders GC [CBBGC]. It is for a scheme including 17,000 dwellings and includes a per-dwelling infrastructure cost similar that used in the Hyas Grant scenario. (The Grant scenario is the appropriate comparison because it excludes the cost of the A12 realignment, which is unnecessary for the CBBGC promoters' 17,000-dwelling scheme).
251. In the CBBGC assessment the first dwellings are assumed to be delivered in 2023. At an average rate of 250dpa, a 17,000-dwelling scheme should take 68 years to deliver. However, the submitted spreadsheets [EXD/085] appear to show the last dwellings completed in 2079, some 11 or 12 years early. The reason seems to be that, whereas for most of the build period delivery is shown as taking place at the rate of 20 dwellings per month (240dpa), for several years in the middle of the build period a rate of 40 dwellings per month (480dpa) is shown. It is not clear, therefore, that the assessment is in fact based on average delivery of 250dpa as intended.
252. Like the ANSC assessment, the CBBGC appraisal also applies a wholly inadequate 10% contingency rate to transport and utility costs. There is no clear evidence that the 27.5% profit rate which they apply would provide a sufficient safeguard against the substantial uncertainties over those costs at this early stage of planning.

253. The CBBGC appraisal also assumes a housing sale price of £351/sq ft, 5% higher than the price of £334/sq ft (based on their analysis of actual market values) in the earlier CBBGC appraisal based on delivery of 354dpa. This increase is explained by the suggestion that the reduced supply of homes to the market would result in increased sales values. But no substantial evidence was provided to support that suggestion, and I consider it unlikely that a reduction in delivery of around 100dpa at one development would have such an effect, when account is taken of all the other development that is proposed to come forward in the housing market area.

254. In the light of these points, I consider that the assessments submitted by promoters of the GC sites do not provide a reliable indication of the viability of the proposed West of Braintree GC or Colchester / Braintree Borders GC.

### **Conclusions on soundness**

255. The ASA is unable to conclude that any of the spatial strategy options, to the west or east of Colchester, is the most sustainable option. It says that the advantage of the strategy in the submitted Section 1 Plan is that it provides clear direction to accommodate strategic development over many decades to come. For the NEAs, the ability of the proposed GCs to provide for long-term strategic growth is one of the key reasons for pursuing the Section 1 Plan strategy in preference to the alternatives, notwithstanding that the ASA finds that some of the alternative options offer opportunities to deliver similar benefits.

256. Consequently, the Plan's spatial strategy, which includes the three proposed GCs, would only be justified as the most appropriate strategy if it can be shown that each GC is deliverable, not just over the Plan period but over the long term. And in order to meet both the NPPF's guidance on infrastructure provision and the Plan's policy requirements, which in accordance with national policy reflect garden city principles, the infrastructure necessary to support the GC's development must also be shown to be deliverable. An assessment of deliverability is also central to the question of whether or not the Plan is effective.

257. Viability appraisal shows that, with an appropriate 40% contingency allowance on transport and utilities infrastructure, the proposed **Colchester / Braintree Borders GC** would not achieve a viable land price, and that the proposed **West of Braintree GC** is below, or at best is at the very margin of, financial viability, contrary to advice in the PPG. On this basis, neither GC is deliverable.

258. For separate reasons, given in paras 143-151 above, neither RTS Route 3 nor RTS Route 4 has been shown to be deliverable. The proposed West of Braintree GC depends on Route 3 for its public transport links to destinations outside the GC, and on Route 4 for links to places east of Braintree. Without those routes, apart from the few journeys that might be possible on foot or bicycle, the car would be the only realistic choice for travel beyond the GC itself.
259. Housing development at the proposed Colchester / Braintree Borders GC is intended to help meet the housing needs of both Colchester borough and Braintree district, and there is a strong commuting relationship between the two local authority areas. Notwithstanding the links to other destinations offered by RTS Route 2 and by rail services from Marks Tey station, the GC would depend on Route 4 for its public transport links westwards to Braintree.
260. In these circumstances, the fact that RTS Routes 3 and 4 have not been shown to be deliverable is entirely at odds with the Plan's aspirations for integrated and sustainable transport networks. Even if the A120 dualling scheme has a good prospect of being delivered as part of the RIS3 programme, not to provide the necessary public transport connections from these two GCs would directly conflict with the NPPF's advice that the transport system needs to be balanced in favour of sustainable transport modes.
261. For the foregoing reasons, therefore, I find that the proposed Colchester / Braintree Borders and West of Braintree GCs are not justified or deliverable. Consequently, the Plan's spatial strategy, and thus the Plan itself as submitted, are unsound.
262. On the other hand, the financial viability of the proposed **Tendring / Colchester Borders GC** is very strong. With an appropriate 40% contingency allowance on transport and utilities infrastructure, it would enable a competitive land price to be paid, while leaving substantial headroom to meet any additional costs that might arise. This provides assurance that the necessary infrastructure, including RTS Route 1, the A120/A133 link road and local highway improvements, are deliverable in the time-frame necessary to support the GC's development. The evidence therefore shows that the GC is deliverable over its lifetime.
263. The broad location for the proposed Tendring / Colchester Borders GC is close to Colchester, the largest town in North Essex, to which it would be connected by RTS Route 1. The GC would have access to the wide range of employment, retail, leisure, healthcare and other facilities in Colchester, in

addition to those that would be provided within the GC itself, and to employment opportunities at the adjacent University of Essex and Knowledge Gateway. Tendring district has a very strong commuting relationship with Colchester, and weaker relationships with Braintree and other destinations to the west of Colchester. As a result, the accessibility of the proposed GC is not critically dependent on the delivery of the other RTS routes.

264. Based on the NEAs' current housing trajectory, and taking into account my conclusions on the rate of housing delivery, the Tendring / Colchester Borders GC would deliver over 2,000 dwellings during the Plan period. That would make a worthwhile contribution to meeting the Plan's overall housing requirement. Based on the latest housing supply figures<sup>45</sup>, it would represent an over-allocation of approximately 5% against the overall requirement. Whether that level of over-allocation is sufficient, and whether the other sources of housing supply will come forward as the NEAs expect, are matters to be considered in the Section 2 plan examinations.
265. As I have discussed above, the ASA made separate assessments of alternative spatial strategies for the areas to the west and east of Colchester. For the above reasons, I consider that the evidence supports the NEAs' view that the proposed Tendring / Colchester Borders GC is the most appropriate of the alternative spatial strategies for the area to the east of Colchester.
266. I therefore conclude that development of the Tendring / Colchester Borders GC would enable the delivery of sustainable development in accordance with the NPPF's policies. If the unsound Colchester / Braintree Borders and West of Braintree GC proposals are removed from the Plan, the Plan is capable of being made sound.

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<sup>45</sup> See para 84 above.

## Advice on the way forward

267. In the light of this conclusion it appears to me that the NEAs have two main options:

- To propose and consult on main modifications to remove the Colchester / Braintree Borders and West of Braintree GC proposals from the Plan; or
- To withdraw the Plan from examination.

268. If the NEAs wish to pursue the first option, they will need to make a formal request under Section 20(7C) of the 2004 Act, asking me to recommend main modifications that would make the Plan sound and legally-compliant. A schedule of proposed main modifications, based on the list of suggested amendments drafted by the NEAs [EB/091B] would then need to be agreed between myself and the NEAs.

269. As well as modifications to remove the two GC proposals from the Plan, the schedule would contain more detailed modifications to other Plan policies that I consider are likely to be necessary in the light of the representations on the Plan and the discussion at the hearing sessions. Some of these have been discussed above. The main modifications would need to be the subject of full public consultation for a minimum of six weeks, and I would need to consider all the responses to the consultation before producing my report and recommendations.

270. Should the NEAs decide to pursue the first option, they will also need to consider whether it is necessary for further SA and/or SEA work to be carried out and consulted upon. The PPG advises:

It is up to the plan-making body to decide whether the sustainability appraisal report should be amended following proposed changes to an emerging plan ... If the plan-making body assesses that necessary changes are significant, and were not previously subject to sustainability appraisal, then further sustainability appraisal may be required and the sustainability report should be updated and amended accordingly<sup>46</sup>.

271. In deciding which option to pursue, the NEAs may wish to bear in mind that it is possible that the responses to public consultation on the main modifications may give rise to the need for further hearing sessions. On this point, the Planning Inspectorate's *Procedure Guide for Local Plan Examinations* advises at paragraph 6.9:

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<sup>46</sup> PPG Ref ID 11-023-20140306

The Inspector will consider all the representations made on the proposed MMs before finalising the examination report and the schedule of recommended MMs. Further hearing sessions will not usually be held, unless the Inspector considers them essential to deal with substantial issues raised in the representations, or to ensure fairness.

272. In addition, if the official 2018-based household projections are published while the examination is still in progress, consideration will need to be given to any implications the projections may have for the soundness of the housing requirement figures in the Plan.
273. For these reasons, at present it is not possible to give a clear indication of when my report and recommendations on the Plan are likely to be produced, should the NEAs decide to pursue the first option.
274. Apart from my request at paragraph 7 above for a response from the NEAs to EXD/091, I am not inviting comments on the contents of this letter. I will, however, assist with any queries the NEAs may have.
275. It would be helpful if you would let me know, as soon as you are able to, which of the options outlined in paragraph 267 above (or any alternative course of action) the NEAs wish to pursue. This will enable a timescale for the remainder of the examination to be developed, should the NEAs wish to pursue the first option. Please contact me through the Programme Officer.

Yours sincerely

*Roger Clews*

Inspector



# Proposed Main Modifications to the Publication Draft Braintree, Colchester and Tendring Local Plans Section One

July 2020

| Ref | Policy / Para N°       | <b>Proposed main modification</b><br><b>Bold text</b> indicates a proposed addition to the text of the publication draft plan<br><del>Struck through text</del> indicates a proposed deletion from the text of the publication draft plan<br><i>Italic text</i> indicates other proposed modifications to the publication draft plan   | <b>Indicative reason(s) for proposed main modification</b>  |
|-----|------------------------|--|---|
| MM1 | Vision for North Essex | <p>North Essex will be an area of significant growth over the period to 2033 and beyond, embracing positively the need to build well-designed new homes, create jobs and improve and develop infrastructure for the benefit of existing and new communities.</p> <p><b>It will continue to be an attractive and vibrant area in which to live and work, making the most of its rich heritage, town centres, natural environment, coastal resorts, excellent educational facilities and strategic transport links which provide access to the ports, Stansted Airport, London and beyond. Rural and urban communities will be encouraged to thrive and prosper and will be supported by adequate community Infrastructure. (Mod A)</b></p> <p>Sustainable development principles will be at the core of the strategic area's response to its growth needs, balancing social, economic and environmental issues. Green and blue infrastructure and new and expanded education and healthcare facilities <b>enabling healthy and active lifestyles (Mod B)</b> will be planned and provided along with other facilities to support the development of substantial new growth; while the <b>undeveloped countryside (Mod C)</b> and <del>heritage assets</del> <b>the natural and historic environment</b> will be <del>protected</del> <b>conserved</b> and enhanced. <b>(Mod D) Key to delivering sustainable development is that new development will address the requirement to protect and enhance be informed by an understanding of the historic environment and settlement character. (Mod E)</b></p> <p>At the heart of our strategic vision for North Essex <del>are</del> <b>is a new garden communities, to be sensitively integrated within the existing historic built and natural environment, the delivery of which is and</b> based on Garden City principles covered by policy SP7. <b>(Mod F)</b></p> <p>The garden communities <del>provides</del> <b>provides an opportunity to create the right balance of jobs, housing and Infrastructure in the right location and (Mod G)</b> will attract</p> | <p><b>Positively-prepared, Justified, Effective</b></p> <p><b>Mod A</b> – Highlight the strategic issues relevant to Section 1.</p> <p><b>Mod B</b> – Include high level strategic objective on the need to support healthy and active lifestyles.</p> <p><b>Mod C</b> – To clarify definition of countryside to be protected.</p> <p><b>Mod D</b> – Include high level strategic objective on the need to preserve and enhance the natural and historic environment.</p> <p><b>Mod E</b> – Include high level strategic objective on the need to</p> |

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|     |                  | <p>residents and businesses who value innovation, community cohesion and a high-quality environment, and who will be provided with opportunities to take an active role in managing the garden community to ensure its continuing success.</p> <p>Residents will live in high quality, innovatively designed, <del>contemporary</del> homes, <b>(Mod H)</b> accommodating a variety of needs and aspirations, located in well-designed neighbourhoods where they can meet their day-to-day needs. There will be a network of tree-lined streets and green spaces, incorporating and enhancing existing landscape features and also accommodating safe and attractive routes and space for sustainable drainage solutions; and leisure and recreation opportunities for both residents and visitors of the garden communityies.</p> <p>Suitable models for the long term stewardship of community assets will be established and funded to provide long term management and governance of assets. All Garden City principles as specified in the North Essex Garden Communities Charter will be positively embraced including, <b>where appropriate</b>, new approaches to delivery and partnership working and <del>sharing of risk and reward</del> for the benefit of the new communityies. <b>Central to this will be the comprehensive planning and development of the garden community, and the aligned delivery of homes and supporting infrastructure. (Mod I)</b></p> | <p>preserve and enhance the historic environment.</p> <p><b>Mod F</b> – To clarify that in addition to Garden City principles, the garden community will have regard to integration with the existing environment.</p> <p><b>Mod G</b> – To clarify the role of the garden community in meeting planning objectives.</p> <p><b>Mod H</b> – Requirement for homes to be ‘contemporary’ is not justified by evidence.</p> <p><b>Mod I</b> – To clarify the approach to planning the garden community.</p> |

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| MM2 | Para 1.31, Strategic Objectives | <p>Providing New and Improved Transport &amp; Communication Infrastructure – to make efficient use of existing transport infrastructure and to ensure sustainable transport opportunities are promoted in all new development <b>to support new and existing communities. (Mod A)</b> Where additional capacity is required in the form of new or upgraded transport infrastructure to support new development, ensuring that this is delivered in a phased &amp; timely way to minimise the impact of new development. To ensure that enabled communication is provided as part of new developments as enabled communication is essential for modern living, and broadband infrastructure and related services will be essential for business, education and residential properties.</p> <p>Ensuring High Quality Outcomes – to promote greater ambition in planning and delivering high-quality sustainable new communities. Overall, new development must secure high standards of urban design and green infrastructure which create attractive and sustainable places where people want to live and spend time. <b>New development needs to be informed by an understanding of the historic environment resource gained through the preparation of Historic Impact Assessments, and to conserve and enhance the significance of the heritage assets and their settings. (Mod B)</b></p> | <p><b>Justified, Effective</b></p> <p><b>Mod A</b> – To clarify that new transport infrastructure will benefit both new and existing communities</p> <p><b>Mod B</b> – To clarify requirement to conserve and enhance the historic environment.</p> |
| MM3 | Para 1.32                       | <p>This section includes the Councils’ response to the opportunities and challenges facing the wider area, in the form of strategic policies that will help to deliver the vision and objectives. These policies only cover those matters that are of strategic relevance to all three authorities. Policies that address local matters are included in the following section of the Plan. <b>The Plan as a whole, including both Sections 1 and 2, will supersede previous Local Plan policies and allocations upon its adoption. A list of the policies superseded by Section 1 and Section 2 of the Plan respectively is included as an appendix to each section.</b></p>   | <p><b>Effective, Legally-compliant</b></p> <p>To identify which previous plan policies are superseded.</p>  |

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| MM4 | Policy SP1        | <p>Policy SP1 – Presumption in Favour of Sustainable Development</p> <p>When considering development proposals the Local Planning Authorities will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. They will always work pro-actively with applicants <del>jointly</del> to find solutions which mean that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area.</p> <p><del>Sustainable development in North Essex will demonstrably contribute to the strategic and local vision and objectives and will accord with the policies in this Local Plan (and, where relevant, with policies in neighbourhood plans). Development that complies with the Plan in this regard will be approved without delay, unless material considerations indicate otherwise.</del></p> <p><del>Where there are no policies relevant to the application or relevant policies are out of date at the time of making the decision then the Council will grant permission unless material considerations indicate otherwise — taking into account whether:</del></p> <ul style="list-style-type: none"> <li><del>any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the National Planning Policy Framework taken as a whole or specific policies in that Framework or the Plan that indicate that development should be restricted.</del></li> </ul> | <p><b>Effective, Consistent with national policy</b></p> <p>To clarify the policy and avoid conflict with or duplication of national policy.</p> |
| MM5 | New paras 2.2-2.7 | <p><b>Recreational disturbance Avoidance and Mitigation Strategy (RAMS)</b></p> <p><b>2.2 A Habitats Regulations Assessment (HRA) was completed for Section 1 of the Plan. The loss of off-site habitat, water quality and increased recreational disturbance were identified as issues with the potential to result</b></p>  | <p><b>Effective, Legally-compliant</b></p> <p>To reflect the completion of the</p>   |

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|-----|------------------|---|--|
|     |                  | <p><b>in likely significant effects on European Sites, without mitigation to address the effects.</b></p> <p><b>2.3 The Appropriate Assessment (AA) identified a number of avoidance and mitigation measures to be implemented, to ensure that development proposals in the Plan will not result in adverse effects on the integrity of any Special Area of Conservation, Special Protection Area or Ramsar site, and are HRA compliant.</b></p> <p><b>2.4 To mitigate for the loss of off-site habitat, the AA identified the need for wintering bird surveys for the Tendring/Colchester Borders Garden Community as part of any project level development proposals and masterplanning (see also paragraph 8.4 and Policy SP8 paragraph F.21 below).</b></p> <p><b>2.5 To protect water quality, the AA recommended the inclusion of policy safeguards to ensure that adequate water and waste water treatment capacity or infrastructure upgrades are in place prior to development proceeding.</b></p> <p><b>2.6 Recreation activities can potentially harm Habitats Sites. The AA identified disturbance of water birds from people and dogs, and impacts from water sports/watercraft as the key recreational threats to Habitats Sites.</b></p> <p><b>2.7 To mitigate for any increases in recreational disturbance at Habitats Sites, the AA identified the need for a mitigation strategy. Natural England’s West Anglian Team identified the Essex coast as a priority for a strategic and proactive planning approach as it is rich and diverse ecologically, and many of the coastal habitats are designated as Habitats Sites. Consequently, 12</b></p> | <p>Essex Coast RAMS Strategy Document and to ensure that the requirements of the Habitats Regulations are met.</p> |

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|     |                                     | <p><b>local planning authorities in Essex have prepared an Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS).</b></p> <p><b>2.8 The Essex Coast RAMS sets out specific avoidance and mitigation measures by which disturbance from increased recreation can be avoided and mitigated thus enabling the delivery of growth without adversely affecting Habitats sites. These measures are deliverable, realistic, underpinned by robust up to date evidence, precautionary and provide certainty for developers around deliverability and contributions. The Essex Coast RAMS Strategy Document was completed in 2019 and will be supported by a SPD.</b></p> |  |
| MM6 | New Policy SP1A to follow after SP1 | <p><b>Policy SP1A – Recreational disturbance Avoidance and Mitigation Strategy (RAMS)</b></p> <p><b>Contributions will be secured from development towards mitigation measures in accordance with the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy 2018-2038 (RAMS).</b></p>   | <p><b>Justified, Effective, Legally-compliant</b></p> <p>New policy required in order to ensure that the requirements of the Habitats Regulations are met.</p> |
| MM7 | Policy SP2                          | <p>Policy SP2 – Spatial Strategy for North Essex</p> <p>Existing settlements will be the principal focus for additional growth across <b>the North Essex Authorities area</b> within the Local Plan period. <b>(Mod A)</b> Development will be accommodated within or adjoining settlements according to their scale, sustainability and existing role both within each individual district and, where relevant, across the wider strategic area.</p>  | <p><b>Mod A – Effective</b></p> <p>To clarify the geographical scope of the plan.</p>  |

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|-----|------------------|--|--|
|     |                  | <p>Future growth will be planned to ensure <b>existing</b> settlements maintain their distinctive character and role, <b>to avoid coalescence between them and to conserve their setting. (Mod B)</b> Re-use of previously-developed land within settlements is an important objective, although this will be assessed within the broader context of sustainable development principles, particularly to ensure that development locations are accessible by a choice of means of travel.</p> <p><b>In Section 2 of its Local Plan, E</b>each local planning authority will identify a hierarchy of settlements where new development will be accommodated according to the role of the settlement, sustainability, its physical capacity and local needs. <b>(Mod C)</b></p> <p>Beyond the main settlements the authorities will support diversification of the rural economy and conservation and enhancement of the natural environment.</p> <p><del>Three new</del> <b>As part of the sustainable strategy for growth, the Tendring / Colchester Borders gGarden eCommunities</b> will be developed and delivered as <del>part of the sustainable strategy for growth, at the</del> <b>broad</b> locations shown on Map 3.3 10.2 below <b>and on the Colchester and Tendring Local Plans Policies Maps.</b> <del>These new communities</del> will provide a strategic locations for at least 7,500 additional homes <b>and employment</b> within the Plan period in North Essex. <del>Employment development will also be progressed with t</del>The expectation <b>is</b> that substantial additional housing and employment development will be delivered in <b>each the Garden eCommunity</b> beyond the current Local Plan periods. <del>They will be planned and developed drawing on Garden City principles, with necessary infrastructure and facilities provided and a high quality of place-making and urban design</del> <b>(Mod D).</b></p> | <p><b>Mod B – Effective</b><br/>To clarify the approach to existing settlements.</p> <p><b>Mod C – Effective</b><br/>To clarify the respective roles of Sections 1 and 2.</p> <p><b>Mod D – Justified, Effective</b><br/>To reflect the deletion of Policies SP9 &amp; SP10, give appropriate emphasis to employment development and avoid duplicating the requirements of other policies.</p> |

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| MM8 | Policy SP3       | <p>Policy SP3 – Meeting Housing Needs</p> <p>The local planning authorities will identify sufficient deliverable sites, <b>developable sites and/or</b> broad locations for their respective plan period, <del>against to meet</del> the <b>housing requirements</b> in the table below, <b>and will incorporate additional provision to ensure flexibility and choice and competition for land. (Mod A)</b></p> <p>Each authority will maintain a sufficient supply of deliverable sites to provide for at least five years' worth of housing, <b>plus an appropriate buffer in accordance with national policy</b>, and will work proactively with applicants to bring forward sites that accord with the overall spatial strategy and relevant policies in the plan. <b>The annual housing requirement figures set out below will be used as the basis for assessing each authority's five-year housing land supply, subject to any adjustments in Section 2 of each plan to address any undersupply since 2013. (Mod B)</b></p> <p><b>The authorities will review their housing requirements regularly in accordance with national policy requirements, and in doing so will have regard to the housing needs of the wider area. (Mod C)</b></p> | <p><b>Mod A – Positively prepared</b><br/>To include reference to additional provision to ensure that housing needs can be met.</p> <p><b>Mod B – Consistent with national policy, Effective</b><br/>To reflect the national policy requirement for a buffer and to clarify the role of Section 2 in addressing housing supply issues to ensure objectively assessed development needs are met.</p> <p><b>Mod C – Consistent with national policy</b><br/>To address the</p> |

| Ref             | Policy / Para N°   | <b>Proposed main modification</b><br><b>Bold text</b> indicates a proposed addition to the text of the publication draft plan<br><del>Struck through text</del> indicates a proposed deletion from the text of the publication draft plan<br><i>Italic text</i> indicates other proposed modifications to the publication draft plan   | <b>Indicative reason(s) for proposed main modification</b>  |  |  |           |     |        |            |     |        |          |     |        |              |              |               |  |
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|                 |  | <table border="1" data-bbox="551 531 1711 852"> <thead> <tr> <th data-bbox="551 531 943 707">Local Authority</th> <th data-bbox="943 531 1323 707">Objectively Assessed Need for Housing <b>requirement</b> per annum</th> <th data-bbox="1323 531 1711 707">Total <del>minimum</del> housing supply in <b>requirement</b> for the plan period (2013 – 2033) <b>(Mod D)</b></th> </tr> </thead> <tbody> <tr> <td data-bbox="551 707 943 743">Braintree</td> <td data-bbox="943 707 1323 743">716</td> <td data-bbox="1323 707 1711 743">14,320</td> </tr> <tr> <td data-bbox="551 743 943 780">Colchester</td> <td data-bbox="943 743 1323 780">920</td> <td data-bbox="1323 743 1711 780">18,400</td> </tr> <tr> <td data-bbox="551 780 943 817">Tendring</td> <td data-bbox="943 780 1323 817">550</td> <td data-bbox="1323 780 1711 817">11,000</td> </tr> <tr> <td data-bbox="551 817 943 852"><b>Total</b></td> <td data-bbox="943 817 1323 852"><b>2,186</b></td> <td data-bbox="1323 817 1711 852"><b>43,720</b></td> </tr> </tbody> </table> | Local Authority   | Objectively Assessed Need for Housing <b>requirement</b> per annum | Total <del>minimum</del> housing supply in <b>requirement</b> for the plan period (2013 – 2033) <b>(Mod D)</b> | Braintree | 716 | 14,320 | Colchester | 920 | 18,400 | Tendring | 550 | 11,000 | <b>Total</b> | <b>2,186</b> | <b>43,720</b> | national policy requirement to have regard to unmet needs in adjacent authorities.<br><br><b>Mod D – Effective</b><br>To clarify terminology so as to avoid ambiguity. |
| Local Authority | Objectively Assessed Need for Housing <b>requirement</b> per annum | Total <del>minimum</del> housing supply in <b>requirement</b> for the plan period (2013 – 2033) <b>(Mod D)</b>   |   |  |  |           |     |        |            |     |        |          |     |        |              |              |               |  |
| Braintree       | 716  | 14,320   |   |  |  |           |     |        |            |     |        |          |     |        |              |              |               |  |
| Colchester      | 920  | 18,400   |   |  |  |           |     |        |            |     |        |          |     |        |              |              |               |  |
| Tendring        | 550  | 11,000   |   |  |  |           |     |        |            |     |        |          |     |        |              |              |               |  |
| <b>Total</b>    | <b>2,186</b>   | <b>43,720</b>  |   |  |  |           |     |        |            |     |        |          |     |        |              |              |               |  |
| MM9             | Policy SP4   | <p>Policy SP4 – Providing for Employment and Retail <b>(Mod A)</b></p> <p>A strong, sustainable and diverse economy will be promoted across North Essex with the Councils <b>local planning authorities (Mod B)</b> pursuing a flexible approach to economic sectors showing growth potential across the Plan period.</p> <p><del>Employment forecasts have been developed using two standard models (East of England Forecasting Model (EEFM) and Experian 2016) which forecast total job growth for each of the local authorities based on past trends. Each local authority has been advised on the most appropriate modelling figure to use in the context of reconciling job and housing demand. These figures are set out for the housing market as follows for the period 2013-2037:-</del></p> <p>Annual Job Forecast:</p>   | <b>Mod A – Effective</b><br>To clarify the scope of the policy.<br><br><b>Mod B – Effective</b><br>To make the Plan's terminology consistent. |  |  |           |     |        |            |     |        |          |     |        |              |              |               |  |

| Ref                 | Policy / Para N° | <b>Proposed main modification</b><br><b>Bold text</b> indicates a proposed addition to the text of the publication draft plan<br><del>Struck-through text</del> indicates a proposed deletion from the text of the publication draft plan<br><i>Italic text</i> indicates other proposed modifications to the publication draft plan   | <b>Indicative reason(s) for proposed main modification</b> |     |                   |     |                     |     |   |
|---------------------|------------------|--|--|-----|-------------------|-----|---------------------|-----|---|
|                     |                  | <table border="1" data-bbox="539 395 1223 512"> <tr> <td>Braintree (EEFM)</td> <td>490</td> </tr> <tr> <td>Colchester (EEFM)</td> <td>928</td> </tr> <tr> <td>Tendring (Experian)</td> <td>490</td> </tr> </table> <p data-bbox="539 576 1653 1209"> <del>In terms of specific B use land provision, each local authority has undertaken work to establish what quantum of employment land would be required within the Plan period to meet the demand identified below for additional B use employment land. These B use employment areas are distributed between each local authority area and based on achieving a sustainable balance between jobs and the available labour force through population growth. As noted above, calculations of employment land required are affected by a range of issues that lead to different employment land portfolios for each local authority area, resulting in a proportionately greater quantum of new floorspace per job in Braintree and Tendring than in Colchester. This is a function of the prominence of higher density office requirements in Colchester and lower density logistics and industrial uses in Braintree and Tendring. The table below sets out the three authorities' employment land requirements for the period 2016—33 for two plausible scenarios, baseline and higher growth. These two bookends provide flexibility to allow for each authority's supply trajectory to reflect their differing requirements. (Mod C)</del> </p> <p data-bbox="539 1297 1653 1410"> <b>In order to meet the requirements for B class employment uses and to maintain appropriate flexibility in provision to meet the needs of different sectors, Section 2 of each plan will allocate employment land to ensure</b> </p> | Braintree (EEFM)   | 490 | Colchester (EEFM) | 928 | Tendring (Experian) | 490 | <p data-bbox="1749 1011 2078 1217"> <b>Mod C – Effective</b><br/>           To provide a more clearly-focussed policy, leaving explanatory detail to the supporting text.         </p> <p data-bbox="1749 1297 2078 1437"> <b>Mod D – Positively Prepared, Effective</b><br/>           To make it clear that site allocations will be         </p> |
| Braintree (EEFM)    | 490              |  |  |     |                   |     |                     |     |   |
| Colchester (EEFM)   | 928              |  |  |     |                   |     |                     |     |   |
| Tendring (Experian) | 490              |  |  |     |                   |     |                     |     |   |

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|--------------------|----------------------------|--|--|----------------------------|------------------------|-----------|---------------------------|------|------------|------|-----------------------------|----------|---------------------------|---------------------------|--------------------|---------------------------|------------------------------|--|
|                    |                            | <p>that provision is made within the ranges set out in the table below. (Mod D)</p> <p>Hectares of B use employment land required:</p> <table border="1" data-bbox="551 735 1711 995"> <thead> <tr> <th></th> <th>Baseline (2012 Based SNPP)</th> <th>Higher Growth Scenario</th> </tr> </thead> <tbody> <tr> <td>Braintree</td> <td><del>23</del> <b>20.9</b></td> <td>43.3</td> </tr> <tr> <td>Colchester</td> <td>22.0</td> <td><del>55.8</del> <b>30.0</b></td> </tr> <tr> <td>Tendring</td> <td><del>20</del> <b>12.0</b></td> <td><del>38</del> <b>20.0</b></td> </tr> <tr> <td><b>North Essex</b></td> <td><del>65</del> <b>54.9</b></td> <td><del>137.4</del> <b>93.3</b></td> </tr> </tbody> </table> <p style="text-align: right;">(Mod E)</p> |  | Baseline (2012 Based SNPP) | Higher Growth Scenario | Braintree | <del>23</del> <b>20.9</b> | 43.3 | Colchester | 22.0 | <del>55.8</del> <b>30.0</b> | Tendring | <del>20</del> <b>12.0</b> | <del>38</del> <b>20.0</b> | <b>North Essex</b> | <del>65</del> <b>54.9</b> | <del>137.4</del> <b>93.3</b> | <p>included in Section 2 to ensure that the requirements in policy SP4 are met.</p> <p><b>Mod E – Justified</b><br/>To ensure that the employment land requirement figures for each authority reflect the evidence</p> |
|                    | Baseline (2012 Based SNPP) | Higher Growth Scenario   |  |                            |                        |           |                           |      |            |      |                             |          |                           |                           |                    |                           |                              |  |
| Braintree          | <del>23</del> <b>20.9</b>  | 43.3   |  |                            |                        |           |                           |      |            |      |                             |          |                           |                           |                    |                           |                              |  |
| Colchester         | 22.0                       | <del>55.8</del> <b>30.0</b>  |  |                            |                        |           |                           |      |            |      |                             |          |                           |                           |                    |                           |                              |  |
| Tendring           | <del>20</del> <b>12.0</b>  | <del>38</del> <b>20.0</b>  |  |                            |                        |           |                           |      |            |      |                             |          |                           |                           |                    |                           |                              |  |
| <b>North Essex</b> | <del>65</del> <b>54.9</b>  | <del>137.4</del> <b>93.3</b>   |  |                            |                        |           |                           |      |            |      |                             |          |                           |                           |                    |                           |                              |  |
| MM10               | Policy SP5<br>First para   | <p>Policy SP5 – Infrastructure and Connectivity</p> <p><del>All D</del> development must be supported by <del>the</del> provision of <del>the</del> infrastructure, services and facilities that are required to serve the needs arising from <del>new</del> <del>the</del> development.</p> <p><b>The requirements in section A of this policy apply only to the Tendring / Colchester Borders Garden Community, whilst the remaining sections B, C, D and E apply to all allocations and development proposals in the North Essex Authorities area.</b></p>  | <p><b>Positively Prepared, Effective</b></p> <p>To ensure the plan addresses infrastructure requirements and to clarify the scope of policy requirements for</p> |                            |                        |           |                           |      |            |      |                             |          |                           |                           |                    |                           |                              |  |

| Ref  | Policy / Para N°            | Proposed main modification  | Indicative reason(s) for proposed main modification  |
|------|-----------------------------|---|--|
|      |                             | <p><del>The following are strategic priorities for infrastructure provision or improvements within the strategic area</del></p>   | the Garden Community.  |
| MM11 | Policy SP5<br>New para<br>A | <p><b>A Tendring / Colchester Borders Garden Community</b></p> <p><b>1 The Development Plan Document (DPD) for the Tendring / Colchester Borders Garden Community will include:</b></p> <p><b>a) An infrastructure delivery strategy and phasing plan that sets out how infrastructure, services and facilities will be provided. Infrastructure delivery will align with each development phase and be supported by suitable mechanisms to deliver the infrastructure both on and off-site;</b></p> <p><b>b) Details of the design and delivery of Route 1 of the rapid transit system, and a programme for the integration of the garden community into the system. The route will be designed to accommodate future route enhancements and technology improvements; and</b></p> <p><b>c) Target modal shares for each transport mode and details of sustainable transport measures to support their achievement.</b></p> <p><b>2 Before any planning approval is granted for development forming part of the Tendring / Colchester Borders Garden Community, the following strategic transport infrastructure must have secured planning consent and funding approval:</b></p> | <p><b>Positively-prepared, Effective</b></p> <p>To clarify essential infrastructure requirements for the Garden Community.</p> |

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|      |                    | <p>a) <b>A120–A133 link road; and</b></p> <p>b) <b>Route 1 of the rapid transit system as defined in the North Essex Rapid Transit System: From Vision to Plan document (July 2019).</b></p> <p><b>3. Sustainable transport measures will be provided from first occupation at the Tendring / Colchester Borders Garden Community to support the achievement of the target modal shares as defined in the DPD for the garden community.</b></p> <p><b>4. Other strategic infrastructure requirements for the Tendring / Colchester Borders Garden Community are set out in sections D, E and F of Policy SP8, and will be further defined in the DPD for the garden community.</b></p>   |   |
| MM12 | Policy SP5, Para B | <p><b>B. Transportation and Travel</b></p> <p><b>The local planning authorities will work with government departments, Highways England, Essex County Council, Network Rail, rail and bus operators, developers and other partners to deliver the following:</b></p> <ul style="list-style-type: none"> <li>• <b>Changes in travel behaviour by applying the modal hierarchy and increasing opportunities for sustainable modes of transport that can compete effectively with private vehicles;</b></li> <li>• <b>A comprehensive network of segregated walking and cycling routes linking key centres of activity;</b></li> <li>• <del>New and improved infrastructure required to support economic growth, strategic and site-specific priorities outlined in the second part of each Local Plan</del></li> <li>• <del>Substantially improved connectivity by promoting more sustainable travel patterns, introducing urban transport packages to increase transport choice,</del></li> </ul> | <p><b>Effective</b></p> <p>To clarify and avoid duplication of transport infrastructure requirements.</p> |

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|-----|------------------|--|--|
|     |                  | <p><del>providing better public transport infrastructure and services, and enhanced inter-urban transport corridors;</del></p> <ul style="list-style-type: none"> <li><del>• Increased rail capacity, reliability and punctuality; and reduced overall journey times by rail</del></li> <li><del>• Support changes in travel behaviour by applying the modal hierarchy and increasing opportunities for sustainable modes of transport that can compete effectively with private vehicles</del></li> <li><del>• Prioritise</del> <b>Improved urban and inter-urban P</b>public transport, particularly in the urban areas, including, <b>and</b> new and innovative ways of providing public transport, including: <ul style="list-style-type: none"> <li>○ high quality rapid transit networks and connections in and around urban areas with links to the new garden community;</li> <li>○ maximising the use of the local rail network to serve existing communities and locations for large-scale growth;</li> <li>○ a bus network <b>providing a high-frequency, reliable and efficient service</b>, that is high quality, reliable, simple to use, integrated with other <b>transport</b> modes <b>serv</b>ing and offers flexibility to serve areas of new demand;</li> <li>○ promoting wider use of community transport schemes;</li> </ul> </li> <li><b>Increased rail capacity, reliability and punctuality, and reduced overall journey times by rail;</b></li> <li><b>New and improved</b> road infrastructure and strategic highway connections to reduce congestion and provide more reliable journey times along the A12, A120 and A133 to improve access to markets and suppliers for business, <del>widen employment opportunities and support growth,</del> <b>specifically:</b> <ul style="list-style-type: none"> <li>○ Improved <b>access to and capacity of</b> junctions on the A12 and other main roads to reduce congestion and address safety;</li> <li>○ A dualled A120 <del>between the A12 and</del> <b>from Braintree to the A12.</b></li> </ul> </li> </ul> |  |

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|      |                    | <ul style="list-style-type: none"> <li>○ <del>A comprehensive network of segregated walking and cycling routes linking key centres of activity contributing to an attractive, safe, legible and prioritized walking/cycling environment</del></li> <li>• <del>Develop innovative strategies for the management of private car use and parking including</del> <b>the promotion of car clubs and car sharing, and provision of support for electric car charging points.</b></li> </ul>  |  |
| MM13 | Policy SP5, Para C | <p><b>C. Social Infrastructure</b></p> <p><b>The local planning authorities will work with relevant providers and developers to facilitate the delivery of a wide range of social infrastructure required for healthy, active and inclusive communities, minimising negative health and social impacts, both in avoidance and mitigation, as far as is practicable.</b></p> <p>Education</p> <ul style="list-style-type: none"> <li>• <del>Provide</del> <b>sufficient school places will be provided</b> in the form of expanded or new primary and secondary schools together with early years and childcare facilities <b>that are phased with new development</b>, with larger developments setting aside land and/or contributing to the cost of delivering land for new schools where required.</li> <li>• <del>Facilitate and support provision of</del> <b>practical vocational training, apprenticeships, and further and higher education will be provided and supported.</b></li> </ul> <p>Health and Wellbeing</p> <ul style="list-style-type: none"> <li>• <del>Ensure that essential</del> <b>healthcare infrastructure will be</b> is provided as part of new developments of appropriate scale in the form of expanded or new <del>healthcare</del> facilities including primary and acute care; pharmacies; dental surgeries; opticians; supporting community services including hospices, treatment and counselling centres.</li> </ul> | <p><b>Effective</b></p> <p>To clarify policy wording and links between provision of different types of social infrastructure and new development</p> |

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|      |                         | <ul style="list-style-type: none"> <li>Require new development to maximise its positive contribution in creating healthy communities and minimise its negative health impacts, both in avoidance and mitigation, as far as is practicable.</li> <li><b>The conditions for a healthy community will be provided through the pattern of development, good urban design, access to local services and facilities; green open space and safe places for active play and food growing, and which are all accessible by walking, cycling and public transport.</b></li> </ul>  |   |
| MM14 | Policy SP5, Para D      | <b>D. Digital Connectivity</b><br><b>Comprehensive digital access to support business and community activity will be delivered through the</b> Roll-out of <del>superfast</del> <b>ultrafast</b> broadband across North Essex to secure the earliest availability for <b>of full fibre connections</b> <del>universal broadband coverage and fastest connection speeds</del> for all existing and new developments (residential and non-residential), <del>where</del> <b>.a</b> All new properties <b>will</b> allow for the provision for <del>super</del> <b>ultrafast</b> broadband in order to allow connection to that network as and when it is made available. | <b>Effective</b><br>To reflect latest terminology, and remove duplicated text.                            |
| MM15 | Policy SP5 – New Para E | <b>E. Water &amp; Waste water</b><br><b>The local planning authorities will work with Anglian Water, Affinity Water, the Environment Agency and developers to ensure that there is sufficient capacity in the water supply and waste water infrastructure to serve new development. Where necessary, improvements to water infrastructure, waste water treatment and off-site drainage should be made ahead of the occupation of dwellings to ensure compliance with environmental legislation.</b>  | <b>Effective</b><br>To ensure that the necessary infrastructure requirements are reflected in the policy. |
| MM16 | Policy SP6              | Policy SP6 – Place-shaping Principles<br>All new development must meet the highest <b>high (Mod A)</b> standards of urban and  | <b>Mod A – Consistent with national policy</b>  |

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|     |                  | <p>architectural design. <del>The local authorities encourage the use of development frameworks, masterplans, and other design guidance documents and will be prepared in consultation with stakeholders where they are needed to support this objective.</del> <del>use design codes where appropriate for strategic scale development.</del> <b>(Mod B).</b></p> <p>All new development should reflect the following <b>place-shaping</b> principles, <b>where applicable (Mod C)</b>:</p> <ul style="list-style-type: none"> <li>• Respond positively to local character and context to preserve and enhance the quality of existing <del>communities</del> <b>places (Mod D)</b> and their environs.</li> <li>• Provide buildings that exhibit individual architectural quality within well-considered public and private realms;</li> <li>• Protect and enhance assets of historical or natural value;</li> <li>• <b>Incorporate biodiversity creation and enhancement measures (Mod E)</b>;</li> <li>• Create well-connected places that prioritise the needs of pedestrians, cyclists and public transport services above use of the private car;</li> <li>• <del>Where possible, provide</del> <b>Provide</b> a mix of land uses, services and densities with well-defined public and private spaces to create sustainable well-designed neighbourhoods;</li> <li>• Enhance the public realm through additional landscaping, street furniture and other distinctive features that help to create a sense of place;</li> <li>• Provide streets and spaces that are overlooked and active and promote inclusive access;</li> </ul> | <p>Modified to align with NPPF guidance and to indicate a proportionate design response.</p> <p><b>Mod B – Effective</b><br/>To clarify the role of design guidance documents.</p> <p><b>Mod C – Effective</b><br/>To clarify that not all the principles are applicable to some developments.</p> <p><b>Mod D – Effective</b><br/>Provides a more appropriate definition of areas covered by the requirement to preserve and enhance.</p> <p><b>Mod E – Consistent with national policy</b><br/>To ensure that development considers environmental enhancement</p> |

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|      |                  | <ul style="list-style-type: none"> <li>• Include parking facilities that are well integrated as part of the overall design and are adaptable if levels of private car ownership fall;</li> <li>• Provide an integrated <b>and connected</b> network of multi-functional <b>biodiverse</b> public open space and green and blue infrastructure <del>that connects with existing green infrastructure where possible,</del> <b>thereby helping to alleviate recreational pressure on designated sites (Mod F);</b></li> <li>• Include measures to promote environmental sustainability including addressing energy and water efficiency, and provision of appropriate <b>water and</b> wastewater and flood mitigation measures <b>including the use of open space to provide flora and fauna rich sustainable drainage solutions (Mod G);</b> and</li> <li>• Protect the amenity of existing and future residents and users with regard to noise, vibration, smell, loss of light, <b>overbearing</b> and overlooking <b>(Mod H).</b></li> </ul> | consistent with 2012 NPPF paragraph 109.<br><b>Mod F – Consistent with national policy</b><br>To ensure that new development incorporates biodiversity creation and enhancement and to recognise its role in helping to alleviate recreational pressure on designated sites<br><b>Mod G – Consistent with national policy</b><br>To highlight potential for sustainable water management solutions<br><b>Mod H – Effective</b><br>To ensure principle is comprehensive. |
| MM17 | Para 8.4         | Loss of off-site habitat – To mitigate for the loss of offsite habitat, the Appropriate Assessment identified the need for wintering bird surveys for the Tendring / Colchester Borders Garden Community as part of any project-level development proposals and masterplanning, to determine the sites of individual importance for golden plover and lapwing and inform mitigation proposals. <del>and a commitment to mitigation and funding of Tendring / Colchester Borders Garden Community is</del>   | <b>Legally-compliant</b><br>To ensure that the requirements of the Habitats Regulations are met.  |

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|      |                           | <del>required within the Section 1 Strategic Plan dependent on the findings of bird surveys.</del> <b>Depending on the findings of the wintering bird surveys, development may need to be phased to take into account the cumulative numbers of SPA birds. In the unlikely but possible event that cumulative numbers of SPA birds affected are likely to exceed the threshold of significance (i.e &gt;1% of the associated European Site), appropriate mitigation in the form of habitat creation and management in perpetuity, either on-site or through provision of strategic sites for these species elsewhere, will be required. Where that mitigation requires the creation and management of suitably located habitat, feeding productivity for these SPA species should be maximised, and such mitigatory habitat would need to be provided and fully functional prior to development which would affect significant numbers of SPA birds.</b> |   |
| MM18 | Policy SP7, First Section | Policy SP7 – Development and Delivery of <del>a New Garden Communities</del> in North Essex<br><br>The following <del>three new garden communities</del> <b>is</b> are proposed in <del>North Essex</del> at <b>the broad location shown on Map 10.2. (Mod A)</b><br><br>Tendring/Colchester Borders, a new garden community <b>which</b> will deliver <b>between 2,200 and 2,500 homes, 7 hectares of employment land and provision for Gypsies and Travellers</b> within the Plan period (as part of an <b>expected</b> overall total of between 7,000 and 9,000 homes <b>and 25 hectares of employment land</b> to be delivered beyond 2033). <b>(Mod B)</b><br><br><del>Colchester/Braintree Borders, a new garden community will deliver 2,500 homes within the Plan period (as part of an overall total of between 15,000 – 24,000 homes</del>   | <b>Mod A – Justified, Effective</b><br>See Inspector’s letter of 15 May 2020 [IED/022].<br><br><b>Mod B – Justified, Effective</b><br>To properly reflect the role of the garden community in providing for housing and employment growth |

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|     |                  | <p><del>to be delivered beyond 2033).</del> <b>(Mod C)</b></p> <p><del>West of Braintree in Braintree DC, a new garden community will deliver 2,500 homes within the Plan period (as part of an overall total of between 7,000-10,000 homes to be delivered beyond 2033).</del> <b>(Mod D)</b></p> <p>Each of these <b>The garden community</b> will be an holistically and comprehensively planned <del>new community</del> with a distinct identity that responds directly to its context and is of sufficient scale to incorporate a range of homes, employment, education &amp; community facilities, green space and other uses to enable residents to meet the majority of their day-to-day needs, reducing the need for outward commuting. <b>It will be comprehensively planned from the outset, with delivery of each new community will be phased to achieve the whole development, and will be underpinned by a comprehensive package of infrastructure. (Mod E)</b></p> <p><b>A Development Plan Document (DPD) will be prepared for the garden community, containing policies setting out how the new community will be designed, developed and delivered in phases, in accordance with the principles in paragraphs i-xiv below. No planning consent for development forming part of the garden community will be granted until the DPD has been adopted. All development forming part of the garden community will comply with these principles. (Mod F)</b></p> <p><del>The Councils will need to be confident, before any consent is granted, that the following requirements have been secured either in the form of appropriate public ownership, planning agreements and obligations and, if necessary a local infrastructure tariff.</del></p> | <p>and for Gypsies and Travellers</p> <p><b>Mods C &amp; D – Justified</b><br/>See Inspector's letter of 15 May 2020 [IED/022]</p> <p><b>Mod E – Effective</b><br/>To clarify the intention of the policy.</p> <p><b>Mod F – Positively prepared, effective</b><br/>To clarify the role of the DPD in governing the development of the new garden community.</p> <p><b>Mod G – Effective</b><br/>To clarify the policy and avoid duplication.</p> |

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|------|-----------------------------|---|--|
|      |                             | <del>The design, development and phased delivery of each new garden community will conform with the following principles</del> <b>(Mod G)</b>   |  |
| MM19 | Policy SP7, principle (i)   | <del>Community and stakeholder empowerment</del> <b>participation</b> in the design and delivery of <del>each</del> <b>the</b> garden community from the outset and a long-term community engagement and activation strategy.   | <b>Effective</b><br><br>Wording amended to clarify the policy intention.                               |
| MM20 | Policy SP7, principle (ii)  | <del>The public sector working pro-actively and collaboratively with the private sector to design, and bring forward these garden communityies, deploying new models of delivery where appropriate sharing risk and reward and ensuring that the cost of achieving the following is borne by landowners and those promoting the developments: (a) securing a high quality of place-making, (b) ensuring the timely delivery of both on-site and off-site infrastructure required to address the impact of these new communityies, and (c) providing and funding a mechanism for future stewardship, management, maintenance and renewal of community infrastructure and assets. Where appropriate, developers will be expected to contribute towards publicly-funded infrastructure, including a contribution towards the A120-A133 link road. Given the scale of and time period for development of these new garden communityies, the appropriate model of delivery will need to secure a comprehensive approach to the delivery of each new community in order to achieve the outcomes outlined in points (a) – (c) in this paragraph above, avoid a piecemeal approach to development, provide the funding and phasing of both development and infrastructure, and be sustainable and accountable in the long term.</del> | <b>Justified</b><br><br>To clarify the policy approach to delivery models and developer contributions. |
| MM21 | Policy SP7, principle (iii) | Promotion and execution of the highest quality of planning, design and management of the built and public realm so that the garden communityies <del>are</del> <b>is</b>  | <b>Effective</b>   |

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|      |                              | characterised as <b>a</b> distinctive places that capitalises on local assets, <b>respects its context</b> , and establishes <b>an</b> environments that promotes health, happiness and well-being. <del>This will involve developing a cascade of design guidance based on a robust assessment of historic and natural environmental constraints and opportunities for enhancement. Guidance which may include</del> concept frameworks, detailed masterplans and design codes and other guidance <b>will be put</b> in place to inform and guide development proposals and planning applications. <del>Planning applications and any local development orders or other consenting mechanisms for the garden communities will be expected to be consistent with approved design guidance.</del> | To avoid duplicating the requirements of policy SP8.  |
| MM22 | Policy SP7, principle (iv)   | Sequencing of development and infrastructure provision (both on-site and off-site) to ensure that the latter is provided ahead of or in tandem with the development it supports to address the impacts of the new garden communities, meet the needs of <b>its</b> residents and establish sustainable travel patterns. <b>To ensure new development does not have an adverse effect on any European Protected or nationally important site and complies with environmental legislation (notably the Water Framework Directive and the Habitats Directive), the required waste water treatment capacity including any associated sewer connections must be available ahead of the occupation of dwellings.</b>   | <b>Effective</b><br><br>To provide a policy safeguard to ensure that phasing of development does not exceed capacity. |
| MM23 | Policy SP7, principle (v)    | Development that provides for a truly balanced and inclusive community and meets the housing needs of local people including a mix of dwelling sizes, tenures and types, <del>including</del> provision for self- and custom-built homes, <del>and</del> provision for the aging population, <b>and provision for Gypsies and Travellers; and that</b> meets the requirements of those most in need including <b>the provision of 30% affordable housing in each</b> the garden community.   | <b>Justified, Effective</b><br><br>To ensure that the policy reflects all housing needs.                              |
| MM24 | Policy SP7, principles (vi), | <b>Change</b> references to 'garden communities' (plural) to 'garden community' (singular).  | <b>Justified</b>  |

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|      | (vii), (viii) & (xiv)       |  | See Inspector's letter of 15 May 2020 [IED/022].   |
| MM25 | Policy SP7, principle (x)   | Create distinctive environments which <b>are based on comprehensive assessments of relate</b> to the surrounding environment and which celebrate natural and historic environments and systems, utilise a multi-functional green-grid to create significant networks of new green infrastructure including <b>a new country parks at each the</b> garden <del>community</del> , and provide a high degree of connectivity to existing corridors and networks and enhance biodiversity.   | <b>Effective</b><br><br>To clarify the requirement to provide a robust evidence base on historic and natural environment issues. |
| MM26 | Policy SP7, principle (xi)  | Secure a smart and sustainable approach that fosters climate resilience and a 21st century environment in the design and construction of <del>each the</del> garden community to secure net gains in local biodiversity, highest standards of energy efficiency and innovation in technology to reduce <b>the</b> impact of climate change, <b>the incorporation of innovative water efficiency/re-use measures</b> (with the aim of being water neutral in identified areas of serious water stress), and sustainable waste and mineral management. | <b>Effective</b><br><br>To clarify these infrastructure requirements.  |
| MM27 | Policy SP7, final paragraph | <del>These principles are elaborated upon in the North Essex Garden Community Charter.</del><br><br><del>A Development Plan Document will be developed for each of the garden communities to set out the principles of their design, development and phasing as well as a mechanism to appropriately distribute housing completions to the three Councils and this will be agreed through a Memorandum of Understanding.</del>   | <b>Effective</b><br><br>Policy re-ordered to provide clarity on the role of the DPD.   |
| MM28 | Policy SP8, First para      | Policy SP8 – Tendring / Colchester Borders Garden Community  | <b>Effective</b>   |

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|------|-------------------------|---|--|
|      |                         | <del>The adopted policies map identifies the broad location for the development of a new garden community of which the details and final number of homes will be set out in a Strategic Growth Development Plan Document (DPD) to be prepared jointly between Colchester BC and Tendring DC. and which will incorporate around 2,500 dwellings and within the Plan period (as part of an overall total of between 7,000-9,000 homes) and provision for Gypsy and Travellers.</del>  | To avoid duplication of the requirements of Policy SP7.  |
| MM29 | Policy SP8, Second para | <del>The Strategic Growth</del> <b>Development Plan Document (DPD) required for the Tendring / Colchester Borders Garden Community by Policy SP7 will define the will set out the nature, form and boundary of the garden community and the amount of development it will contain. The adoption of the DPD will be contingent on the completion of a Heritage Impact Assessment carried out in accordance with Historic England guidance. The Heritage Impact Assessment will assess the impact of proposed allocations upon the historic environment, inform the appropriate extent and capacity of the development and establish any mitigation measures necessary.</b> The document <b>DPD</b> will be produced in consultation with <b>the local community and</b> stakeholders and will include a concept plan showing the disposition and quantity of future land-uses, and give a three-dimensional indication of the urban design and landscape parameters which will be incorporated into any future planning applications; together with a phasing and implementation strategy which sets out how the rate of development will be linked to the provision of the necessary social, physical and environmental infrastructure to ensure that the respective phases of the development do not come forward until the necessary infrastructure has been secured. <del>The DPD will provide the framework for the subsequent development of more detailed masterplans and other design and planning guidance for the Tendring / Colchester Borders Garden Community.</del> <b>The DPD and any application for planning permission for development forming part of the garden community must be consistent with the requirements set out in this policy.</b> | <b>Justified, Effective</b><br><br>To provide more detail on the role of the DPD and to make it clear that the DPD will be informed by a Heritage Impact Assessment. |

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|------|---------------------------------|--|--|
| MM30 | Policy SP8, New third paragraph | <b>For the Plan period up to 2033, housing delivery from the garden community, irrespective of its actual location, will be distributed equally between Colchester Borough Council and Tendring District Council. If, after taking into account its share of delivery from the garden community, either of those authorities has a shortfall in delivery against the housing requirement for its area, it will need to make up the shortfall within its own area. It may not use the other authority's share of delivery from the garden community to make up the shortfall.</b> | <b>Positively planned, Effective</b><br><br>To clarify how the housing at the garden community will be distributed, and the process for addressing unmet need. |
| MM31 | Policy SP8, Para A.2.           | Detailed masterplans and design guidance, <b>based on a robust assessment of historic and natural environmental constraints and opportunities for enhancement</b> , will be <b>adopted</b> <del>put in place</del> to inform and guide development proposals and planning applications <b>for the garden community</b> . <del>Planning applications for this garden community will be expected to be consistent with approved DPDs and subsequent masterplans and design and planning guidance.</del>  | <b>Justified</b><br><br>To ensure that masterplans and design guidance are based on appropriate evidence.  |
| MM32 | Policy SP8, Para C.5.           | <b>The garden community will make</b> <del>Provision for a wide range of jobs, skills and training opportunities will be created in the garden community.</del> <b>The DPD will allocate about 25 hectares of B use employment land within the garden community.</b> This may include <b>provision for B1 and/or non B class employment generating uses</b> towards the south of the site in proximity to the existing University of Essex and Knowledge Gateway, and provision for B1, B2 and B8 businesses to the north of the site close to the A120.                         | <b>Positively prepared</b><br><br>To clarify the process for determining employment land allocations.  |
| MM33 | Policy SP8, Para                | A package of measures will be introduced to encourage smarter transport choices  | <b>Positively prepared, Effective</b>  |

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|      | D.7                   | to meet the needs of the new community and <b>to</b> maximise the opportunities for sustainable travel. <b>Policy SP5 requires planning consent and full funding approval for the A120-A133 link road and Route 1 of the rapid transit system to have been secured before planning approval is granted for any development at the garden community.</b><br><br><b>Additional transport priorities</b> including the provision of a network of footpaths, cycleways and bridleways to enhance permeability within the site and to access the adjoining areas, development of of a public rapid transit system connecting the garden community to Essex University and Colchester town centre park and ride facilities, and other effective integrated measures to mitigate the transport impacts of the proposed development on the strategic and local road network. Longer term transport interventions will need to be carefully designed to minimise the impacts on the strategic and local road <b>transport</b> network and fully mitigate any environmental or traffic impacts arising from the development. <del>These shall include bus (or other public transit provisions) priority measures between the site, University of Essex, Hythe station and Colchester Town Centre;</del> | To clarify the transport infrastructure requirements for the garden community.  |
| MM34 | Policy SP8, Para D.9  | Primary vehicular access to the site will be provided off the A120 and A133. <b>Any other road improvements required to meet needs arising from the garden community will be set out in the DPD and further defined as part of the masterplanning process.</b>  | <b>Positively prepared, Effective</b><br><br>To clarify the transport infrastructure requirements for the garden community. |
| MM35 | Policy SP8, Para E.13 | <b>Increased</b> primary healthcare facilities <b>capacity</b> will be provided to serve  | <b>Positively prepared, Effective</b>   |

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|      |                       | the new development <b>as appropriate. This may be by means of new infrastructure or improvement, reconfiguration, extension or relocation of existing medical facilities.</b>  | To clarify the healthcare requirements for the garden community.  |
| MM36 | Policy SP8, Para F.17 | <b>The delivery of smart, innovative and sustainable water efficiency/re-use solutions that fosters climate resilience and a 21<sup>st</sup> century approach towards water supply, water and waste water treatment and flood risk management. Taking a strategic approach to flood risk through the use of Strategic Flood Risk Assessments and the updated Climate Projections 2019 and identifying opportunities for Natural Flood Risk Management.</b> Provision of improvements to waste water treatment plant including an upgrade to the Colchester Waste Water Treatment Plan and off-site drainage improvements <b>aligned with the phasing of the development within the plan period and that proposed post 2033. To ensure new development does not have an adverse effect on any European Protected or nationally important site and complies with environmental legislation (notably the Water Framework Directive and the Habitats Directive), the required waste water treatment capacity including any associated sewer connections must be available ahead of the occupation of dwellings.</b> | <b>Positively prepared, Effective</b><br><br>To clarify the requirements for water supply and waste water infrastructure and to comply with the requirements of the Habitats Regulations. |
| MM37 | Policy SP8, Para F18  | Provision, management and on-going maintenance of sustainable surface water drainage measures to manage and mitigate the risk of flooding on site and which will reduce the risk of flooding to areas downstream or upstream of the development. <b>To ensure new development does not have an adverse effect on any European Protected or nationally important sites and complies with environmental legislation (notably the Water Framework Directive and the Habitats Directive), the required waste water treatment capacity including any associated sewer connections must be available ahead of the occupation of dwellings.</b>  | <b>Effective</b><br><br>To ensure that phasing of development does not exceed the capacity of waste water infrastructure.   |

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| MM38 | Policy SP8, New Para F.20<br><i>(Renumber subsequent paragraphs accordingly)</i> | <b>Conserve, and where appropriate enhance, the significance of heritage assets (including any contribution made by their settings) both within and surrounding the site. Designated heritage assets within the garden community area include the Grade II listed Allen’s Farmhouse, Ivy Cottage, Lamberts, and three buildings at Hill Farmhouse. Designated heritage assets nearby include the Grade I listed Church of St Anne and St Lawrence, Elmstead, the Grade II* listed Wivenhoe House, Elmstead Hall and Spring Valley Mill and numerous Grade II listed buildings as well as the Grade II listed Wivenhoe Registered Park and Garden. Harm to the significance of a designated heritage asset should be avoided in the first instance.</b>  | <b>Consistent with national policy</b><br><br>To ensure that the policy gives appropriate protection to the historic environment. |
| MM39 | Policy SP8, Para F.21 (previously F.20)  | Avoidance, <del>P</del> <b>protection and/or enhancement of heritage and biodiversity assets within and surrounding the site; including Bullock Wood SSSI, Ardleigh Gravel Pits SSSI, Wivenhoe Pits SSSI and Upper Colne Marshes SSSI and relevant European protected sites. Contributions will be secured towards mitigation measures in accordance with the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy. Wintering bird surveys will be undertaken at the appropriate time of year as part of the DPD preparation to identify any offsite functional habitat. Should any be identified, development must firstly avoid impacts. Where this is not possible, development must be phased to deliver habitat creation and management either on- or off-site to mitigate any significant impacts. Any such habitat must be provided and fully functional before any development takes place which would affect significant numbers of SPA birds.</b> | <b>Legally compliant, Effective</b><br><br>To ensure that the requirements of the Habitats Regulations are met.                   |
| MM40 | Policy SP8 New Para F.   | <b>Allocation of additional land within the garden community, to accommodate University expansion, which is at least equivalent in size to the allocation in</b>  | <b>Justified, Effective</b>   |

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|------|---|---|--|
|      | 26 (final paragraph)                      | <b>the Colchester Local Development Framework Site Allocations document October 2010.</b>   | To ensure that adequate land is allocated to meet the needs of the University.   |
| MM41 | Policy SP9                                | <i>Delete the whole of Policy SP9.</i>  | <b>Justified</b><br><br>See Inspector's letter of 15 May 2020 [IED/022]  |
| MM42 | Policy SP10                               | <i>Delete the whole of Policy SP10.</i>   | <b>Justified</b><br><br>See Inspector's letter of 15 May 2020 [IED/022]  |
| MM43 | Braintree Section 1 Local Plan Chapter 10 | <u><b>In the Braintree Section 1 Local Plan Chapter 10 (Appendices &amp; Maps):</b></u><br><br><i>Delete the West of Braintree and Colchester / Braintree Borders Garden Community designations from Map 10.1, change the title of the map to 'Key Diagram', and change the legend for 'Garden Communities' to read 'Garden Community'.</i><br><br><i>Delete Maps 10.2A and 10.3B.</i><br><br><b>Replace Maps 10.4C &amp; 10.5D with new Map 10.2 below entitled 'Tendring Colchester Borders Garden Community – Broad Location'.</b> | <b>Effective</b><br><br>To reflect the deletion of policies SP9 & SP10 and to show the broad location of the Tendring / Colchester Borders Garden Community accurately |

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| MM44 | Colchester Section 1 Plan Chapter 10 | <p><b><u>In the Colchester Section 1 Local Plan Chapter 10 (Section One Maps):</u></b></p> <p><b>Delete</b> the West of Braintree and Colchester / Braintree Borders Garden Community designations from Map 10.1, and change the legend for ‘Garden Communities’ to read ‘Garden Community’.</p> <p>Following Map 10.1, <b>insert</b> new Map 10.2 below entitled ‘Tendring Colchester Borders Garden Community – Broad Location’.</p>  | <p><b>Effective</b></p> <p>To reflect the deletion of policies SP9 &amp; SP10 and to show the broad location of the Tendring / Colchester Borders Garden Community accurately</p> |
| MM45 | Tendring Section 1 Plan Maps         | <p><b><u>In the Tendring Section 1 Local Plan:</u></b></p> <p><b>Delete</b> the West of Braintree and Colchester / Braintree Borders Garden Community designations from Map 1.</p> <p><b>Delete</b> the West of Braintree and Colchester / Braintree Borders Garden Community designations from Map 2, and change the legend for ‘Garden Communities’ to read ‘Garden Community’. Retitle the map ‘10.1 Key Diagram’, and move it to the end of the Section 1 Plan.</p> <p>Following Map 10.1, <b>insert</b> new Map 10.2 below entitled ‘Tendring Colchester Borders Garden Community – Broad Location’.</p> <p><b>Delete</b> Local Map B.7 Tendring Colchester Borders Garden Community</p> | <p><b>Effective</b></p> <p>To reflect the deletion of policies SP9 &amp; SP10 and to show the broad location of the Tendring / Colchester Borders Garden Community accurately</p> |

| Ref  | Policy / Para N°                  | <b>Proposed main modification</b><br><b>Bold text</b> indicates a proposed addition to the text of the publication draft plan<br><del>Struck through text</del> indicates a proposed deletion from the text of the publication draft plan<br><i>Italic text</i> indicates other proposed modifications to the publication draft plan | <b>Indicative reason(s) for proposed main modification</b>   |
|------|-----------------------------------|--|--|
| MM46 | At end of Section 1 Plan          | <i>Insert Appendix A below entitled 'List of policies superseded by Section 1 of the Plan'</i>   | <b>Legally compliant</b><br><br>To comply with relevant legislation.                                   |
| MM47 | Colchester Local Plan Front Cover | The Publication Draft stage of the Colchester Borough Local Plan <del>2013</del> 2017-2033   | <b>Justified, Effective</b><br><br>To ensure that the cover of the plan shows the correct plan period. |

**TO BE ADDED TO THE SCHEDULE**

- **Map 10.2 (based on EXD/080A) entitled 'Tendring Colchester Borders Garden Community – Broad Location'**
- **Appendix A, entitled 'List of policies superseded by Section 1 of the Plan'**

## PLANNING POLICY AND LOCAL PLAN COMMITTEE

15 JULY 2020

### REPORT OF THE CORPORATE DIRECTOR: PLACE AND ECONOMY

#### A.2 – COLCHESTER TENDRING BORDERS GARDEN COMMUNITY – DEVELOPMENT PLAN DOCUMENT (DPD)

(Report prepared by Gary Guiver)

#### PART 1 – KEY INFORMATION

##### PURPOSE OF THE REPORT

To update the Planning Policy and Local Plan Committee on the work intended to be carried out for the preparation of a 'Development Plan Document' (DPD) for the Tendring Colchester Borders Garden Community which will guide its future growth and development.

##### EXECUTIVE SUMMARY

###### Key Points

- Of the three Garden Communities that were originally proposed in the shared Section 1 Local Plan for North Essex, only the Tendring Colchester Borders Garden Community was found, by the Planning Inspector, to be deliverable and sound.
- Assuming all three of the North Essex Authorities (Tendring, Braintree and Colchester) agree to proceed with consultation on the Inspector's recommended modifications to the Section 1 Local Plan (as explained in Report A1), it is intended that a 'Development Plan Document' (DPD) will be prepared jointly by Tendring District Council and Colchester Borough Council which will contain more detailed parameters and policies to guide the development of the Tendring Colchester Borders Garden Community.

The North Essex Authorities which include Braintree, Colchester and Tendring Councils have now received the Inspector's report outlining his views on the soundness of each authority's Section 1 Local Plan (as discussed in a separate report A1 on this agenda). While the Inspector has concluded that he did not find the Colchester Braintree Borders and West of Braintree Garden Communities to be deliverable, he did conclude that development of the Tendring/Colchester Borders Garden Community (TCBGC) would enable the delivery of sustainable development in accordance with the National Planning Policy Framework's policies.

On this basis, Tendring and Colchester now wish to proceed with the next stages of plan-making for the Garden Community which will involve the preparation of a Development Plan Document (DPD)

to guide development. The DPD will provide the next level of detail required to progress the overall high-level Garden Community principles mandated by Section 1. Adoption of the DPD will entail joint working between the Councils, in consultation with stakeholders at all stages of plan development. It is expected that the DPD will be a joint planning document adopted by both Councils.

An initial consultation on Issues and Options was held on TCBGC from November 2017-January 2018. The study work and responses from that consultation form a starting point for the next phase of work, bearing in mind the changes during the intervening period. In addition to Section 1 Local Plan developments, key amongst the changes was the Councils' successful bid for £99K in Housing Infrastructure Funding for an A120/A133 link road and a Rapid Transit Scheme to support the Garden Community. Work undertaken to inform the HIF projects has been carried out with the requirements of the Garden Community and its DPD in mind, so studies and masterplanning completed for these essential infrastructure projects will feed into the DPD process.

The Councils will work together to commission further evidence base and masterplanning work required to support the DPD. As with masterplanning work carried out for the Issues and Options stage, work will include focused consultation with stakeholders and existing communities in the vicinity of TCB GC.

The precise timetable for the DPD is not yet fixed but the Local Development Scheme will be brought back to this Committee as required for scrutiny, with adoption currently programmed for 2022.

#### **RECOMMENDATION**

**That the Planning Policy and Local Plan Committee notes the proposals for preparation of a Development Plan Document (DPD) for the Tendring Colchester Borders Garden Community.**

## **PART 2 – IMPLICATIONS OF THE DECISION**

### **DELIVERING PRIORITIES**

The preparation of a new Local Plan and the delivery of a new Garden Community on the Tendring/Colchester Border is a high priority for both Tendring District Council and Colchester Borough Council. The preparation of a Development Plan Document (DPD) is essential for enabling the Garden Community to be comprehensively planned, delivered in a coordinated manner and for ensuring that government funding towards key infrastructure such as the associated A120/A133 Link Road and the Rapid Transit System is secured.

### **RESOURCES AND RISK**

The preparation of the Development Plan Document will be funded jointly by Tendring District Council and Colchester Borough Council through their respective LDF/Local Plan budgets. The £99million 'Housing Infrastructure Funding' (HIF) secured by Essex County Council for the

A120/A133 Link Road and the Rapid Transit System is contingent on the preparation of the DPD and granting planning permission for early phases of the development within key timescales.

Risks associated with the DPD include slippage of the programme which might have a knock-on effect on securing the above-mentioned HIF funding and delivering the Garden Community in a timely manner. Other risks include the level and nature of representations received during the consultation stages that will require careful consideration at each stage as the proposals are refined and finalised for examination in due course; and the risk of legal challenge towards the end of the process if third parties are aggrieved by the proposals or believe there have been any legal or procedural issues.

## **LEGAL**

Development Plan Documents essentially carry the same legal status as a 'Local Plan' in forming part of the statutory 'Development Plan' for an area, albeit for a specific location – in this case the area proposed for a new Garden Community.

Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 (as amended) state that applications for planning permission must be determined in accordance with the 'development plan' unless material considerations indicate otherwise. On adoption, the proposed DPD will form part of the development plan.

Section 33A of the Planning and Compulsory Purchase Act 2004, as amended ("2004 Act") places 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 naturally includes proposals such as this for a cross-boundary Garden Community. As with the Local Plan, before a Planning Inspector can begin the process of examining a DPD they need to be satisfied that the local authority has demonstrated it has done everything it can to ensure effective cooperation with neighbouring authorities and other partner organisations and has sought to resolve, as far as is possible, any cross-boundary planning issues.

The Town and Country Planning (Local Planning)(England) Regulations 2012 make provision for the operation of the local development planning system including, for the purposes of this report, regulations relating to the preparation, publication and representations relating to a local plan and the independent examination.

As with the Local Plan, the DPD will need to the subject of Sustainability Appraisal and its environmental and socio-economic impacts and that of alternative options/approaches need to be assessed with the aim of achieving sustainable development. Similarly, a Habitats Regulation Assessment will be a legal requirement aimed at determining the impacts on internationally important wildlife habitats.

The DPD, like the Local Plan, will be the subject of public consultation and an examination – the latter of which will determine the ‘soundness’ of the proposals against the requirements of the National Planning Policy Framework (NPPF).

### OTHER IMPLICATIONS

**Area or Ward affected:** All wards (although the land proposed for a Garden Community crossing the Tendring/Colchester Border falls mainly within the new Alresford and Elmstead ward and the Ardleigh and Little Bromley ward).

**Consultation/Public Engagement:** Further to the Issues and Options consultation undertaken in 2017/18, it is envisaged that there will be two more rounds of consultation at ‘preferred options’ and ‘publication draft’ stage and that Tendring and Colchester will work together on a programme of publicity and engagement, at the appropriate times, that meet the requirements of the Council’s respective ‘Statements of Community Involvement’ (SCI).

### PART 3 – SUPPORTING INFORMATION

Development based on Garden Community principles forms a core element of the Section 1 Local Plan jointly submitted by Braintree, Colchester and Tendring Councils. While the Inspector has concluded that he did not find the Colchester Braintree Borders and West of Braintree Garden Communities to be deliverable, he did conclude that development of the Tendring/Colchester Borders Garden Community (TCBGC) would enable the delivery of sustainable development in accordance with the National Planning Policy Framework’s policies.

The progression to adoption of Section 1 of the Local Plan is discussed in a separate report to this Committee. As the report notes, ‘Confirmation of the soundness of the Tendring Colchester Borders Garden Community should also allow Tendring District Council and Colchester Borough Council to work together on the preparation of a ‘Development Plan Document’ (DPD) setting out more detailed parameters for the Garden Community.’

Section 1 Policy SP7 (Development and Delivery of a New Garden Community in North Essex) provides that ‘*A Development Plan Document (DPD) will be prepared for the garden community containing policies setting out how the new community will be designed, developed and delivered in phases, in accordance with the principles in paragraphs i–xiv below. No planning consent for any development forming part of the garden community will be granted until the DPD has been adopted.*’ (Main Modification version)

More specifically, SP8 (Tendring/Colchester Borders Garden Community) provides that ‘*The Development Plan Document (DPD) required by Policy SP7 for the Tendring Colchester Borders*

*Garden Community will define the boundary of the garden community and the amount of development it will contain.* (Main Modification version) The policy also specifies that the DPD must be contingent on the completion of a Heritage Impact Assessment; be produced in consultation with the local community and stakeholders; include a three dimensional indication of the urban design and landscape parameters that will be incorporated into any future planning applications; and a phasing and implementation schedule for necessary infrastructure.

In line with the above Local Plan objectives, Colchester and Tendring Councils have previously carried out initial work on Issues and Options for TCBGC. An initial consultation on Issues and Options was held on TCBGC from November 2017-January 2018. This document posed a series of questions on how the DPD should best address the following 10 defining principles of the North Essex Garden Communities Charter:

- Green Infrastructure
- Integrated and Sustainable Transport
- Employment Opportunity
- Living Environment
- Smart and Sustainable Living
- Good Design
- Community Engagement
- Active Local Stewardship
- Strong Corporate and Political Public Leadership
- Innovative Delivery Structure

The study work and responses from that consultation form a starting point for the next phase of work, bearing in mind the changes during the intervening period.

Work necessary to underpin the delivery of required transport infrastructure for TCBGC has been aided by the successful bid made by Essex County Council in August 2019 for £99K from the Housing Infrastructure Fund. As HIF funding is intended to enable housing delivery, the funding was awarded on the basis that it will provide capacity and access to enable residential developments in TCB GC. The two components of this bid were:

- A new link road running east of Colchester between the A120 and the A133 to provide greater connectivity into the proposed new development; and
- Rapid Transit development funding a route from TCBGC via University of Essex into Colchester

The schemes will address a package of transport and access matters, enabling early implementation of sustainable transport options to stimulate behaviour change and address highway capacity constraints in east Colchester and west Tendring. ECC carried out a public consultation on possible options for the link road and RTS in November – December 2019. Following a review of consultation responses, ECC Cabinet approved a preferred route for the link road at its 26 May 2020 meeting, Option 1C, which accorded with the view of the CBC response on options for the link road. ECC Cabinet also agreed to develop further analysis of options for RTS routing through Colchester.

A wide range of evidence base work will be required to support the DPD. The extent of work required will depend on the additional detail required on top of study work completed for the Colchester and Tendring Local Plans. In general, Section 1 work can be assumed to have addressed authority-wide issues of impact, context and need, but further work for TCBGC will be required to address Garden Community specific issues as follows:

Housing – detailed analysis required of tenure split, affordability, Gypsy and traveller requirements, accessibility provision, and housing standards.

Employment – identification of particular types of employment required to maximise links with University and potential of Garden Community model for new working arrangements

Centres – analysis required of the role of Garden Community centres, impact on other centres.

Green Infrastructure – specific analysis required of level and types of provision, accessibility and relationship to surrounding area

Heritage – Heritage Impact Assessment required providing detailed assessment of impact on existing heritage assets

Health – Health Impact Assessment required providing a comprehensive approach to health and well-being that considers design and infrastructure in the context of active lifestyles, prevention, use of digital technology, and co-location of health facilities with other community facilities

Sustainable Movement – Building on work carried out to support HIF, modelling work is needed analysing measures that will lead to modal shift away from car-based movements to other sustainable modes including walking, cycling and public transit.

Infrastructure Delivery Plan – detailed analysis of physical, social and environmental infrastructure required to support each phase of development

Viability – viability work will need to analyse proposal in the context of the chosen delivery model and the need to address Garden Community principles such as long-term stewardship.

Sustainability and Climate Change measures - As an exemplar scheme for Garden Communities, TCBGC will be expected to adopt best practice across the board in all aspects of sustainable design, construction and in climate change adaptation measures. The DPD will need to be supported by evidence for ambitious targets and innovative projects.

Minerals Resource Assessment – ensure safeguarded minerals sites are appropriately safeguarded and/or worked prior to development.

Integrated Water Management Study – Phase 1 of the IWMS provided a high level analysis of water supply, wastewater services and flood risk management for the three Garden Communities originally proposed in the Section 1 Local Plan. Phase 2 study is programmed to identify and determine site specific water management measures which can serve to minimise demand as far as possible and set out how surface water and flood risk can be managed on site in an integrated way.

Sustainability Appraisal and Habitats Assessment work will inform all stages of plan development to ensure the DPD addresses all required sustainability and habitats protection requirements. It is intended to commission LUC to complete this work based on their involvement with the Section 1 SA and HRA.

The work above largely needs to be completed by consultants due to its specialised nature, but clearly additional officer resources will need to be devoted to overall project co-ordination, consultant management, and public consultation. Colchester and Tendring Officers are collaborating on an agreed work programme, timescale and budget. To avoid duplication and maximise efficiency project co-ordination is also including identification of work required to support the examination of Section 2 policies and allocations as well as work being completed further to the HIF link road and RTS work.

The DPD can be scrutinised by each council's committee with responsibility for Local Plans, however other options for governance of the plan-making process could also be pursued such as a joint DPD committee. Governance arrangements will be influenced by the model chosen for delivery of the Garden Community and the degree of council involvement in the process.

#### **APPENDICES**

None.

#### **BACKGROUND PAPERS**

None.

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## LOCAL PLAN COMMITTEE

15 JULY 2020

### REPORT OF THE CORPORATE DIRECTOR: PLACE AND ECONOMY

#### A.3 - PROPOSED AMENDMENT TO THE STATEMENT OF COMMUNITY INVOLVEMENT

(Report prepared by Will Fuller and Paul Woods)

#### PART 1 – KEY INFORMATION

##### PURPOSE OF THE REPORT

To seek the Planning Policy and Local Plan Committee's approval of the proposed amendments to the Statement of Community Involvement (SCI) In light of the Coronavirus (COVID19) pandemic.

##### EXECUTIVE SUMMARY

Key Points:

- The Statement of Community Involvement (SCI) details the way in which the public will be consulted on all planning matters.
- Due to the Coronavirus the Council cannot carry out consultations in the same way.
- It is therefore recommended that Members agree a covering note that will be incorporated into the existing SCI to explain the current situation.

This report reflects the need to revise planning related public access and involvement procedures contained in the Council's Statement of Community Involvement (SCI) in the light of Government guidance on coronavirus implications.

##### RECOMMENDATION

That the Planning Policy and Local Plan Committee:

- (a) agrees the recommended revisions to the Council's Statement of Community Involvement (SCI) as (shown in Appendix 1) to reflect the specific requirements arising from national guidance and procedures on dealing with coronavirus implications; and
- (b) authorises Officers to publish the updated Statement of Community Involvement on the Council's website.

## PART 2 – IMPLICATIONS OF THE DECISION

### DELIVERING PRIORITIES

These SCI supports the Corporate Plan 2020-24 (aligned with the core themes of Tending4Growth and Community Leadership) through delivery of interventions aimed at:

- Delivering High Quality Services
- Community Leadership Through Partnerships
- Building Sustainable Communities for the Future
- Strong Finances and Governance
- A Growing and Inclusive Economy

### RESOURCES AND RISK

The proposed amendments to the SCI were prepared by the Council's Strategic Planning and Place Team under the leadership of the Assistant Director for Spatial Planning and Place within the agreed 'LDF Budget'. The SCI sets out the proposed approach to consultation which can have resource implications including costs of media publicity and (under normal conditions) any exhibitions or public meetings.

Without updating the SCI as proposed in this report, the Council could come under criticism or challenge for not being able to carry out consultation in the usual manner, as set out in the document at present. The proposed additions reflect specific guidance and regulations that have been issued at a national level to allow consultation to be carried out in alternative ways in light of the COVID-19 pandemic.

### LEGAL

Section 18 of the Planning and Compulsory Purchase Act 2004, as amended provides that the Council must prepare a Statement of Community Involvement, which is a statement of the authority's policy as to the involvement in the exercise of its functions.

### OTHER IMPLICATIONS

**Equality and Diversity:** The processes for consultation and community engagement in the updated SCI aim to give people equal opportunity to engage in the planning process, including 'hard to reach' groups.

**Area or Ward affected:** All wards.

**Consultation/Public Engagement:** The adopted (2018) SCI was the subject of eight weeks public consultation in its own right to enable interested parties to comment on the proposed approach to community engagement and consultation on other planning documents and planning applications.

In relation to SCIs, the revised Planning Practice Guidance (PPG) states at paragraph 78: “*There is no requirement in legislation for local planning authorities to consult when reviewing and updating their Statement of Community Involvement, although it is good practice for authorities to inform the public of their intentions to update this document and of the changes that have been made. It is also good practice to make clear that the changes are only temporary whilst restrictions relating to COVID-19 are in place.*”

## **THE AMENDED STATEMENT OF COMMUNITY INVOLVMENT**

A Statement of Community Involvement (SCI) is a document required by Section 18 of the Planning and Compulsory Purchase Act 2004 which sets out what consultation will take place with the community on planning policy documents and planning applications.

The Council approved the latest version of the SCI in June 2018. It is available on the Council website. The 2018 update included information on Development Plan Documents (DPDs) and also included minor amendments on community involvement for the development management process.

The Government has been aware that its latest guidance on measures required to address Covid-19, has implications for the ability of authorities to comply with policies set out in their SCIs. The Government has addressed the need to modify consultation requirements for an interim period in the Flexibility of Local Authority Meeting Regulations 2020 and in modifications to Planning Policy Guidance (published 13 May 2020). In recognition of social distancing requirements and the current need to limit public access to public buildings, new Government guidance removes the requirement to provide for the availability of hard copies of documents in council offices and libraries. This is line with the Government’s wish to increase the use of electronic alternatives to help speed up the planning system. Site notice requirements remain, but local authorities are given more discretion to use alternative electronic means to ensure relevant parties are notified.

The revised Plan Making Planning Practice Guidance (PPG) states at paragraph 77:

*Where any of the policies in the Statement of Community Involvement cannot be complied with due to current guidance to help combat the spread of coronavirus (COVID-19), the local planning authority is encouraged to undertake an immediate review and update the policies where necessary so that plan-making can continue.*

Given these considerations, Officers have prepared a covering table for inclusion at the front of the SCI highlighting changes to the document covering the following points (Attached as Appendix 1):

- Availability of hard copies of documents, consultation materials and planning applications
- Site Notices and Site Visits.
- Public meetings and exhibitions.

The SCI will be kept under review and modified as required to take account of both the latest health and safety requirements and adoption of new consultation methods. Future changes to the SCI will be brought to the Planning Policy and Local Plan Committee for consideration as and when required

## **APPENDICES**

Appendix 1 – The proposed addition to the Council's Statement of Community Involvement (SCI).

**Statement of Community Involvement (SCI) July 2020 Update**

This Statement of Community Involvement (SCI) explains how communities and stakeholders can get involved in the preparation of Council Planning documents like the Local Plan and the consideration of individual Planning applications.

Please note that due to the Coronavirus outbreak, the Council may not be able to follow all of the commitments set out in this document. The Council is committed to keeping essential services running, but the way we deliver some services has changed. This is to protect our community and staff from unnecessary travel and social contact, in line with Government advice and guidance. The table below sets out key commitments in this document where the way we provide our service has changed. These changes are temporary although it is unknown how long these changes will apply.

We will continue to monitor the situation and will update this document as required. For further information about how Council services are affected, please visit our website at <https://www.tendringdc.gov.uk/coronavirus>.

For further information regarding changes that have been introduced to certain publicity requirements in response to the Coronavirus pandemic, please see paragraphs 035 to 052 of Consultation and Pre-decision Matters - Planning Practise Guidance (PPG) which has been updated on 13 May 2020, available from: <https://www.gov.uk/guidance/consultation-and-pre-decision-matters>.

| Paragraph  | Existing Commitment  | Current Service   |
|--|--|---|
| <p>2.5 (Local Plan)</p> <p>3.13 (Development Management)</p> <p>4.3 (DPDs)</p> | <p>Availability of hard copies of documents, consultation materials and planning applications.</p> | <p>Hard copies of Planning Policy documents will be made available whenever possible in accessible locations. Consultation documents will be deposited at Council offices and libraries throughout the district if they are open at the time of consultation.</p> <p>If public buildings are not open during a period of consultation, officers will seek to provide hard copies on request.</p> <p>Documents will continue to be available on the Council's website.</p> <p>Planning Policy documents can be viewed online at: <a href="https://www.tendringdc.gov.uk/planning/local-plans-and-policies">https://www.tendringdc.gov.uk/planning/local-plans-and-policies</a>.</p> <p>Information on Planning applications can be viewed at: <a href="https://www.tendringdc.gov.uk/planning/planning-applications/view-planning-applications-and-comment">https://www.tendringdc.gov.uk/planning/planning-applications/view-planning-applications-and-comment</a>.</p> <p>Specific enquiries can be made to the Planning Services email address: <a href="mailto:Planning.Services@tendringdc.gov.uk">Planning.Services@tendringdc.gov.uk</a>.</p> |

| Paragraph   | Existing Commitment              | Current Service  |
|---|----------------------------------|--|
| 3.9 and 3.13<br>(Development Management)  | Site Notices and Site Visits.    | <p>Following an initial suspension of site visits, officers are now able to undertake some site visits providing social distancing can be maintained, for example visits low-risk outdoor sites accessed from open areas. This approach will continue to be monitored and updated in response to any change in risk level or public health advice.</p> <p>Where appropriate, photographic surveys or video tours of application sites and buildings are being requested from applicants in support of Planning and Listed Building Consent applications.</p> <p>Site notices are posted on a discretionary basis when a proposal is likely to have a wider impact, not just on adjoining neighbours (who will already have been notified of the application in writing).</p> |
| 2.5 (Local Plan)<br><br>3.13<br>(Development Management)<br><br>4.3 (DPDs)<br><br>7.2 and 7.3<br>(Hard to Reach Groups) | Public meetings and exhibitions. | <p>We are not currently holding or attending any face-to-face meetings or exhibitions. Where meetings are being held virtually using web-based technology the Council will endeavour to participate where invited, subject to other commitments.</p> <p>Planning Policy documents can still be viewed online at: <a href="https://www.tendringdc.gov.uk/planning/local-plans-and-policies">https://www.tendringdc.gov.uk/planning/local-plans-and-policies</a>.</p> <p>Information on Planning applications can be viewed at: <a href="https://www.tendringdc.gov.uk/planning/planning-applications/view-planning-applications-and-comment">https://www.tendringdc.gov.uk/planning/planning-applications/view-planning-applications-and-comment</a>.</p>                     |

## PLANNING POLICY AND LOCAL PLAN COMMITTEE

15 JULY 2020

### REPORT OF THE CORPORATE DIRECTOR: PLACE AND ECONOMY

#### A.4 – AMENDMENTS TO POLICY PPL10: RENEWABLE ENERGY GENERATION AND ENERGY EFFICIENCY MEASURES

(Report prepared by Gary Guiver and William Fuller)

#### PART 1 – KEY INFORMATION

##### PURPOSE OF THE REPORT

To seek the Planning Policy and Local Plan Committee's endorsement for suggested amendments to Policy PPL10 on 'Renewable Energy Generation' in Section 2 of the Council's emerging Local Plan. This follows a meeting involving some Members of the Council's Climate Change Working Group and the Planning Policy and Local Plan Committee held on 25<sup>th</sup> June 2020, where a form of wording was agreed for this Committee's consideration.

##### EXECUTIVE SUMMARY

At its last meeting on 8<sup>th</sup> July 2020, the Planning Policy and Local Plan Committee was asked to consider a number of suggested amendments to certain planning policies in Section 2 of the Council's emerging Local Plan relating to housing design standards, efficiency and accessibility. Most of the suggested amendments were agreed by the Committee and will be put forward to the Planning Inspector, as appropriate, for their consideration as part of the Local Plan examination process. It was however decided that consideration any amendments to Policy PPL10 on 'Renewable Energy Generation' would be deferred to allow discussion with the Council's Climate Change Working Group to ensure they properly embrace the ambitions of the Council in tackling the climate emergency.

On 25<sup>th</sup> June 2020, some Members from the Climate Change Working Group and the Planning Policy and Local Plan Committee met, virtually via Skype, to discuss potential further amendments to Policy PPL10 and the wording that was agreed is set out as follows:

##### Policy PPL10

##### RENEWABLE ENERGY GENERATION AND ENERGY EFFICIENCY MEASURES

Proposals for renewable energy schemes will be considered having regard to their scale, impact (including cumulative impact) and the amount of energy which is to be generated.

All proposals for new development of any type should consider the potential for a range of renewable energy solutions, appropriate to the building(s), site and its location, and should include

renewable energy installations, and be designed to facilitate the retro-fitting of renewable energy installations.

For residential development proposals involving the creation of one or more dwellings, the Council will expect detailed planning applications to be accompanied by a 'Renewable Energy Generation Plan' (REPG) setting out the measures that will be incorporated into the design, layout and construction aimed at maximising energy efficiency and the use of renewable energy. The REGP must demonstrate how the following measures have been considered and incorporated:

- Triple Glazing;
- Solar Roof Panels or Solar Tiles;
- Air Source Heating Systems;
- Ground Source Heating Systems;
- Super Insulation (walls and loft void);
- Rainwater Capture Systems;
- Electric Vehicle Rapid Charging Points (provided to an individual dwelling or through an appropriate communal facility);
- Superfast Broadband and a flexible space within each home to enable home working and a reduction in the need to travel;
- Mechanical Heat Recovery Ventilation;
- Solar Thermal Systems;
- Solar and Battery Storage Systems; and (where appropriate)
- Other newer or alternative technologies and measures aimed at maximising energy efficiency and the use of renewable energy.

Planning permission will only be granted where the applicant can demonstrate that the above measures have been fully considered and, where viable and appropriate, incorporated into the design, layout and construction. The Council will consider the use of planning conditions to ensure the measures are delivered.

To maximise the effectiveness of Solar Panels, buildings should be planned and orientated to have a strong southerly aspect and for the south side of pitched roofs to be rectilinear and uncluttered. Dormer Windows, hipped roofs and corner tower elements should be confined to the northern side of pitched roofs.

Nothing in this policy diminishes or replaces the requirements of Energy Performance Certificates (EPC) and Standard Assessment Procedures (SAP) for constructed buildings and compliance with the relevant building regulations.

The advantage of the proposed policy wording is that rather than setting out a prescriptive list of requirements, it places the onus on the applicant for planning permission to submit material to demonstrate how they have considered the available range of technologies and measures that can be put in place to maximise energy efficiency and the use of renewable energy and how they have incorporated them into their design, layout and construction. Where certain measures are considered to be inappropriate, impractical or unviable, the applicant's response to this policy gives them the opportunity to explain their reasons. Planning Officers and Members of the Planning Committee can

then determine whether or not proposals have met the requirements of the policy and achieve an appropriate response to climate change.

Your Officers support the proposed wording and see it as a reasonable, justified and workable response to the climate change emergency.

The Local Plan has already been submitted to the Secretary of State for it to be examined by a government-appointed Planning Inspector. The Inspector has the power to recommend 'modifications' to the Local Plan, following the examination, aimed at addressing any issues with the soundness of the plan. Whilst it will be at the Inspector's discretion which modifications are formally recommended, the Council will have the opportunity to suggest changes to the Inspector, for their consideration, as part of the examination process. It is recommended that the amended wording for Policy PPL10 set out above be put forward to the Inspector for their consideration, at the appropriate time.

## **RECOMMENDATION**

**That the Planning Policy and Local Plan Committee:**

- a) considers and approves the revised wording for Policy PPL10 in the Tendring District Local Plan 2013-2033 and Beyond: Publication Draft (the emerging Local Plan) as set out in the executive summary above;**
- b) authorises the Assistant Director for Strategic Planning and Place, in consultation with the Chairman of the Planning Policy and Local Plan Committee, to put forward the suggested wording, in the form of amendments to the current draft policy, to the Planning Inspector for their consideration as part of the examination of the Section 2 Plan; and**
- c) authorises the Assistant Director for Strategic Planning and Place, in consultation with the Chairman of the Planning Policy Local Plan Committee, the Chairman of the Council's Climate Change Working Group and the Assistant Director for Housing and Environment, to draft associated amendments to the 'supporting text' or 'preamble' to Policy PPL10 which will also be put forward for the Inspector's consideration as part of the examination process.**

## **PART 2 – IMPLICATIONS OF THE DECISION**

### **DELIVERING PRIORITIES**

One of the key themes in the Council's emerging Corporate Plan 2020-2024 is "Building Sustainable Communities for the Future" for which one priority is having effective planning policies. Other priorities include achieving carbon neutrality by 2030, improving health and wellbeing and supporting business activity. The Council has also declared a 'Climate Emergency' giving greater urgency to

measures aimed at reducing carbon emissions and tackling climate change. The amendments to the Council's emerging planning policies set out in this report are aimed at improving their effectiveness in helping to improve residents' quality of life whilst also tackling climate change.

## **RESOURCES AND RISK**

The preparation of the Local Plan is being managed by the Council's Planning Policy Team utilising funds from the agreed Local Development Framework (LDF) budget. This budget will also cover the cost of the independent examination of the Local Plan where Officers and, where necessary, expert consultants will defend the plan's policies and proposals in front of a government-appointed Planning Inspector. The amendments to policies recommended in this report, if agreed, will be forwarded to the Inspector for their consideration, along with other amendments, as part of the examination process.

Officers consider that there is sufficient evidence to justify the approach being suggested in this report from a need, viability and affordability perspective but that there may or may not be a cost involved in elaborating on or strengthening this evidence if the amendments attract objections from third parties; or if the Inspector requests further detailed evidence.

The potential risks of introducing the suggested policy amendments could include rejection by the Planning Inspector if he or she concludes that the changes are not necessary, viable or affordable; objections from third parties (most likely landowners or developments) to the changes – most likely on viability grounds; and a negative local reaction to the physical appearance of solar panels on new properties if they fail to respect or enhance the character of an area or appear unattractive.

## **LEGAL**

The planning legislation and the National Planning Policy Framework (NPPF) (both the 2012 version applicable to this Local Plan and the new 2018 version that was updated in 2019) 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.

Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 (as amended) state that applications for planning permission must be determined in accordance with the 'development plan' unless material considerations indicate otherwise. The statutory 'development plan' for Tendring, as it stands is the 2007 Adopted Local Plan. However, the policies and proposals in the Adopted Local Plan are increasingly out of date. 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 essential to progress the emerging Local Plan through the stages of the plan making process and ensure it meets

the requirements of national planning policy so it can become the new statutory development plan and be relied upon by the Council acting as the Local Planning Authority.

The Town and Country Planning (Local Planning)(England) Regulations 2012 make provision for the operation of the local development planning system including, for the purposes of this report, regulations relating to the preparation, publication and representations relating to a local plan and the independent examination.

The NPPF requires 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. Any modifications proposed by the Inspector at the end of the examination process will ensure the plan meets all of these requirements but these have to be published for consultation in their own right before the Council can proceed to the final adoption of the Local Plan.

The amendments being suggested through this report are not an indication that the emerging Local Plan as currently written is ‘unsound’, but are aimed at improving the plan in response to comments received during the last public consultation, concerns raised locally about the quality of new residential development and, in particular, the Council’s declaration of a climate emergency.

#### **OTHER IMPLICATIONS**

**Area or Ward affected:** All wards.

**Consultation/Public Engagement:** The emerging Local Plan has already been the subject of three rounds of consultation – issues and options in 2015, preferred options in 2016 and the publication draft stage in 2017. If the Planning Inspector recommends modifications to the Local Plan following the examination of Section 2, those modifications (which may or may not incorporate the amendments recommended in this report) will be published for consultation in their own right before the plan can be formally adopted.

#### **APPENDICES**

None.

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