

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 16th 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 8th 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 8th 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 27th June 2018 set out the Inspector’s findings in respect of the need for new homes. The third letter dated 2nd 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 22nd 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 14th January 2020

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

Day 2: Wednesday 15th January 2020

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

Day 3: Thursday 16th January 2020

- Matter 6: Transport and infrastructure.

Day 4: Tuesday 21st 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 22nd January 2020

- Matter 7: Viability.

Day 6: Thursday 23rd January 2020

- Matter 8: Sustainability Appraisal.

Day 7: Thursday 30th 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 30th 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' \(March 2020\).](#)