

PLANNING POLICY AND LOCAL PLAN COMMITTEE

11 NOVEMBER 2021

REPORT OF THE DEPUTY CHIEF EXECUTIVE & MONITORING OFFICER

A.1 – TENDRING COLCHESTER BORDERS GARDEN COMMUNITY JOINT DEVELOPMENT PLAN DOCUMENT & JOINT COMMITTEE

(Report prepared by Lisa Hastings)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

For the Planning Policy and Local Plan Committee to formally recommend to Full Council that a joint Development Plan Document is prepared together with Colchester Borough Council; and that a Joint Committee is established with Colchester Borough Council and Essex County Council in relation to the Tendring Colchester Borders Garden Community.

EXECUTIVE SUMMARY

The Tendring Colchester Borders Garden Community (TCBGC) is located across Tendring and Colchester's Local Planning Authority's area, accordingly the District/Borough Councils can consider establishing a Joint Committee made up of members from each of their Councils.

Both Tendring and Colchester have now adopted a common Section 1 of their Local Plan, which has the shared vision of sustainable development and allocation of TCB Garden Community, which will be further defined through a joint Development Plan Document (DPD) providing detailed parameters and policies (as required within Section 1 – Policies SP7 & 8).

The Planning Policy and Local Plan Committee, at its meeting on 29th June 2021 approved the updated Local Development Scheme for 2021-24, which made reference to the jointly prepared Development Plan Document (DPD) with Colchester for the TCBGC however, a formal agreement is required under Section 28 of the Planning and Compulsory Purchase Act 2004. The Committee need to formally recommend this to Full Council, the outcome of this will be updated to Cabinet at its meeting also considering the Joint Committee for TCBGC on 12th November 2021.

Because of the joint nature of Section 1 there is a case to be made for a Joint Committee for Tendring and Colchester, and include members from Essex County Council, continuing with the existing partnership working on this project. This format has been adopted elsewhere and links into decisions around infrastructure and possibly other County matters.

- (i) It is possible to delegate various functions to a Joint Committee but at this stage the proposed Terms of Reference would be limited to planning functions related to: preparing for plan making through the DPD process; and
- (ii) development control and determination of planning applications for TCBGC against the common Section 1 and adopted DPDs.

Essex County Council have also proposed to transfer/delegate their relevant planning functions to the Joint committee for Tendring Colchester Borders Garden Community.

The alternative to establishing a Joint Committee, is to leave the current arrangements in place such that Cabinet and/or the relevant Committee of both Councils would be involved in the decision making process for production of the Draft DPD. Once the DPD is adopted, the relevant Council's Planning Committee would deal with any individual planning application in their area. This latter option could present some complications associated with managing the practicalities, delay the process and it is considered beneficial to advance the joined up and partnership approach through to decision making.

The Tendring Colchester Borders Garden Community Member Group have assessed the various options and consider the Joint Committee approach for both the TCBGC joint DPD and Development Control functions will demonstrate the Councils continued partnership commitment to delivering the Garden Community, provide increased confidence to the developers and Government, remove delayed individual decision making through working together for the benefit of the residents in both areas.

The establishment of the Joint Committee will be limited to the TCBGC with all other local planning authority functions remaining unaffected and resting with Tendring District and Colchester Borough Councils.

The proposed Terms of Reference and Scheme of Delegation of the TCBGC Joint Committee are set out in Appendix A and consequential amendments to the District Council's Planning Policy and Local Plan Committee are set out in Appendix B.

Further executive functions related to the TCBGC can be delegated by the Leader, as the project develops and a partnership agreement may be deemed necessary between the Councils to formulate arrangements between them.

RECOMMENDATION

That the Planning Policy and Local Plan Committee recommends to Full Council:

- (a) that a joint Development Plan Document is prepared together with Colchester Borough Council in accordance with Section 28 of the Planning and Compulsory Purchase Act 2004; and**
- (b) that a Joint Committee is established with Colchester Borough Council and Essex County Council in relation to the Tendring Colchester Borders Garden Community for the discharge of executive and non-executive functions related to TCBGC, pursuant to Sections 101(5), 102(1)(b) and 102(2) of the Local Government Act 1972 on the terms of reference and attached as Appendix A.**

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

North Essex Garden Communities forms part of the Council's Corporate Plan under Building Sustainable Communities for the Future. The Councils' 'Place Shaping' role is key to planning for the future needs of our communities. The Joint Committee will assist in ensuring a cohesive approach to the housing and infrastructure needed to make a successful community.

The Joint Committee will provide appropriate governance and decision making arrangements between partner Councils in relation to the Tendring Colchester Borders Garden Community.

Section 1 of the Local Plan adopted by Full Council in January 2021 contains a specific Policy (SP 8) for the Development & Delivery of a New Garden Community in North Essex, which states:

“Tendring/Colchester Borders, a new garden community which will deliver between 2,200 and 2,500 homes, 7 hectares of employment land and provision for Gypsies and Travellers within the Plan period (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).

The garden community will be holistically and comprehensively planned with a distinct identity that responds directly to its context and is of sufficient scale to incorporate a range of homes, employment, education & 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. It will be comprehensively planned from the outset, with delivery phased to achieve the whole development, and will be underpinned by a comprehensive package of infrastructure. 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 the principles set out in SP8.

Requirements of the Tendring/Colchester Borders Garden Community Development Plan Document (DPD) are set out in Policy SP 9 of the adopted Section 1 of the Local Plan and states:

“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. The DPD will be produced in consultation with the local community and 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. 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. 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.”

RESOURCES AND RISK

Joint DPD work is already being funded through the Local Plan budget and the new Joint Committee would be serviced within the normal committee administration process.

The administration costs of the Joint Committee will be funded through the project costs however, the responsibility for administration of the Committee will sit with Tendring District Council until agreed otherwise.

LEGAL

Every Local Planning Authority must prepare and maintain a Local Development Scheme (LDS) in accordance with Section 15 of Planning and Compulsory Purchase Act 2004 (as amended). The LDS is the Council's rolling project plan (often covering a period of three years) for producing its Local Development Documents and sets out a timetable for the delivery. The LDS must identify:

- Which of their Local Development Documents are local plans or supplementary planning documents;
- The subject matter and geographical area to which any local plan relates;
- Which local plans (if any) are to be prepared jointly with another Council and
- The timetable for the preparation and revision of the local plans.

Local Planning Authorities must revise their LDS at such time as they consider appropriate and make available to the public the up-to-date text and a copy of any amendments made and published on the Council's website, together with up-to-date information showing compliance (or non-compliance) with the timetable.

Under Section 28 of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act"), two or more local authorities may agree to prepare one or more joint local development documents. Pursuant to Regulation 4(4A) and (4C) of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, the making of an agreement to prepare one or more joint development plan documents shall not be the responsibility of an executive of the authority. The decision therefore to agree to prepare a joint development plan document must be made by Full Council. Tendring District Council's Planning Policy and Local Plan Committee, at its meeting on 29th June 2021 approved the updated LDS for 21-24, which made reference to the jointly prepared DPD with Colchester for the TCBGC however, a formal agreement is required under Section 28 of the 2004 Act. The Committee need to formally recommend this to Full Council, the outcome of this will be updated to Cabinet at its meeting considering its report on the establishment of a Joint Committee for TCBGC.

The DPD process and Development Control functions involve both executive and non-executive responsibilities therefore it is important to ensure the correct decision making body is delegating the right functions to any Joint Committee. Only planning functions relating to TCBGC are proposed for delegation at this time however, this can be expanded once the governance arrangements with the developer and their partners evolve.

The Local Authorities (Functions and Responsibilities)(England) Regulations 2000 (as amended) specify functions which are not to be the responsibilities of an authority's Cabinet or are to be the responsibility of such an executive only to a limited extent or only in limited circumstances.

Paragraphs (1) to (3) of Regulation 4 allocate responsibility for various aspects of functions relating to the formulation and preparation of plans and strategies of the descriptions specified in Schedule 3 between a Council and their Cabinet. Schedule 3 lists Development Plan Documents as defined by Section 15 of the 2004 Act. Therefore, whilst the formulation and preparation of the DPDs are executive functions and can be discharged by a Joint Committee, some actions relating to the DPD process are designated to Full Council and these have been reflected in the Terms of Reference as proposed in Appendix A.

Full Council, upon recommendation from Cabinet, can agree to the appointment of the Joint Committee for the Development Control functions and act as planning authority in that regard.

The proposed Terms of Reference for the Joint Committee are attached to the Report as Appendix A. Consequently, some changes will be required to the Terms of Reference to the Planning Policy and Local Plan Committee and these are attached as Appendix B.

OTHER IMPLICATIONS

Area or Ward affected:

Alresford & Elmstead
Ardleigh & Little Bromley

Consultation/Public Engagement:

No public consultation has been undertaken for the establishment of a Joint Committee however, it is important to recognise that the work of the Joint Committee will still involve public consultation, statutory and otherwise through a detailed community engagement strategy. All environmental and equality considerations are taken into account through plan making and individual decision making of the Joint Committee.

PART 3 – SUPPORTING INFORMATION

Local Development Scheme (LDS) inc. TCBGC DPD

The Council's Local Development Scheme (LDS) was approved by Tendring's Planning Policy and Local Plan Committee in June 2021, which sets out an indicative timetable for preparing key planning documents. It is particularly useful for the public, partner organisations and third parties to understand, broadly, the programme of work and how the Council proposes to resource and manage it. The LDS covers the adoption of the new Local Plan, the Tendring Colchester Borders Garden Community Development Plan Document (DPD); the future review of the Local Plan and the production of other key planning documents. It includes the anticipated timetable of consultation periods, examinations and expected dates of adoption.

The LDS refers to the Tendring Colchester Borders Development Plan Document (DPD) for the Garden Community in west Tendring. A DPD follows the same process for preparation as a Local Plan. It builds on policy or policies in the Local Plan and provides significantly more implementation detail. Any DPD for west Tendring will require the co-operation and collaboration with Colchester Borough Council. This DPD in Colchester's LDS is described as a 'Strategic Growth Development Plan Document'. In Section 1 of the Adopted Local Plan, Policy SP8 states:

"The Strategic Growth DPD will set out the nature, form and boundary of the new community. The document will be produced in consultation with 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. 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.”

The LDS sets out the following timetable for the production, consultation and approval of the TCBGC joint DPD:

Tendring Colchester Garden Community Development Plan Document Joint (DPD)	
Subject and scope	This document will contain policies and allocations to guide the new Garden Community proposed at the Tendring/Colchester border. This DPD will be produced jointly with Colchester Borough Council and Essex County Council.
Geographical area	The broad location for the Garden Community is identified in the Section 1 Local Plan. The precise boundaries will be designated in this DPD
Chain of conformity	Tendring and Colchester Local Plans The relevant Planning Acts and Regulations Essex Minerals and Waste Plans National Planning Policy Framework (NPPF).
Indicative timetable for production	
Document Preparation	Winter 2020/21 – Winter 2021/22
Member approval of draft DPD	Winter 2021/22
Draft DPD Consultation	Winter 2021/22
Document Preparation	Spring 2022 – Autumn 2022
Member approval of submission DPD	Autumn 2022
Submission DPD Consultation	Autumn 2022
Submission to Secretary of State	Winter 2022
Examination	Winter 2022
Inspector’s report	Spring 2023

TCBGC Member Group:

Colchester, Essex and Tendring Councils (the Partner Councils) recognise their strategic executive objectives, contractual responsibilities and statutory functions covering highways, education, and planning functions and the inter-relationship between these in delivering the Garden Community.

Essex County Council (ECC) has been working with Homes England (acting on behalf of MHCLG) to enter into formal contract (Grant Determination Agreement (GDA)) with one another for the Housing Infrastructure Fund (HIF). Within the GDA there are a number of responsibilities on ECC as the Grant Recipient which will impact upon the delivery of the programme and ECC will ensure they keep the TDC & CBC (the LPAs) informed of progress or delays in this regard.

The Partner Councils have signed a Memorandum of Understanding setting out how they will work together towards their intended objective of unlocking development at TCBGC as well as demonstrating the LPAs agreement with the content of the Housing Delivery Statement and the Recovery and Recycling Strategy but was not intended to create any contractual arrangement between the Partner Councils.

The Partner Councils have established a TCBGC Member Group whose purpose is to continue the strong partnership working arrangements which existed prior to the formation of NEGC Ltd and during its trading and provide political oversight of the delivery of the Garden Community at Tendring Colchester Borders. The Group is not a formal decision-making body.

The Partner Councils are committed to the Garden Community Principles and will collectively work together to deliver and oversee the programme in an open and transparent manner. The Member Group will continue its role alongside any newly established Joint Planning Committee.

HIF

The Tendring Colchester Borders Garden Community indicative housing trajectory, produced based on evidence to support the shared Section 1 of the Local Plans states that the first 100 homes will be delivered on site by 2024/25.

At Essex County Council's Development and Regulation Committee on 1st November 2021, the planning application for the Link road was approved.

CURRENT POSITION

The options for a Joint Committee have been considered by the TCBGC Member Group, which Councillors G. Guglielmi and Turner attend on behalf of Tendring District Council. Through assessment of the options the proposed Terms of Reference have been discussed and it is recommended that those attached as **Appendix A** are adopted by Tendring, Colchester and Essex Councils to formally appoint the Joint Committee to exercise these functions delegated to it.

Essex County Council are also proposing to delegate their Local Planning Authority functions to the Joint Committee for Tendring Colchester Borders Garden Community.

In exercising the above functions, the kind of matters that would fall to the Joint Committee to consider, in the determination of planning applications would include:

- Housing – all tenures (market, affordable, and specialist housing for elderly persons etc);
- New schools (primary, secondary, special education needs early years and post 16);
- Community centre, community hub and library;
- leisure uses, sports provision, and allotments;
- Country parks, recreation and public open space;
- Any waste development proposals;
- Sustainable Urban Drainage;
- Town/neighbourhood centre(s) and associated shops (all shapes and sizes);
- Public realm, footpaths and dedicated cycle routes/network;
- All new roads and road crossing within the Garden Community;
- Any segregated/dedicated bus routes;
- Commercial and employment sites, including energy for waste proposals; and
- Minerals planning applications.

In addition the Joint Committee would also have a role in considering:

- The heads of terms for S106 obligations relating to the mitigation measures, necessary infrastructure and affordable housing required to deliver a policy compliant development.
- Development viability, where relevant, in relation to S106 obligations.
- Stewardship model aligned to the S106 and associated permissions.
- Ongoing monitoring of the compliance of development with agreed permissions, related obligations/conditions and its implementation to an agreed standard.

The proposed Joint Committee will be appointed by both Cabinet and Council with regards to the executive and non-executive functions, as set out and will consist of 3 members from each Council, one of which has to be a member of each Council's respective Cabinets, appointed by the Leader. Each authority will have equal voting rights with the Chairman rotating annually.

It is not currently proposed that the Joint Committee will replace the TCBGC Member Group, as the role of the former will be to oversee the preparation of the statutory process for both the joint DPD production and determining subsequent planning applications within the Garden Community. The TCBGC Member Group consists of Cabinet Members and Chairman of the Tendring District Council's Planning Policy and Local Plan Committee with responsibility for the delivery of the Garden Community providing overarching strategic direction, working collaboratively across the 3 Councils and with the developers, where such involvement does not compromise the Councils' statutory decision making processes.

Although is not currently being suggested that this partnership approach is formalised beyond the existing terms of reference of the TCBGC Member Group, this will be kept under review as discussions with the Developers progress.

The development of the TCBGC will be underpinned by a comprehensive 'master-planned' approach informed by technical research and evidence as well as the feedback received through stakeholder engagement. The master-planning work already being undertaken by the authorities working with consultants Prior + Partners will inform key elements of the Joint Development Plan Document (DPD) that will go before the proposed Joint Committee for consideration, including the overall spatial layout of the TCBGC and the policies within the joint DPD that will be used in the determination of future planning applications. In turn, there will be an expectation for applicants for planning permission to also follow a master-planned approach both in conforming to the requirements of the joint DPD and in generating more detailed proposals and design approaches for relevant phases of the development.

Mersea Homes hold options over the majority of the land within the TCBGC area and they have recently announced they are working with a lead development partner, Latimer to develop the TCBGC.

Latimer is the development arm of Clarion Housing Group. Clarion Housing is the UK's largest housing association, owning and managing 125,000 homes. The Councils will work closely and effectively with the Developers in overseeing the planning and delivery of the TCBGC. This partnership will be governed by planning and/or delivery agreements. From a planning perspective Planning Performance Agreements (PPAs) and Memoranda of Understanding (MoUs) set out how the parties will work together to comprehensively plan the TCBGC through the strategic and development management phases.

Due to a new Joint Committee being established the terms of reference of the Council's Planning Policy and Local Plan Committee will need to amended, as proposed in **Appendix B**. Cabinet should recommend these to Council to formally approve as part of the Constitution in the normal manner.

APPENDICES

Appendix A: DRAFT TERMS OF REFERENCE FOR TENDRING COLCHESTER BORDERS GARDEN COMMUNITY JOINT COMMITTEE

Appendix B: PROPOSED AMENDMENTS TO THE PLANNING POLICY & LOCAL PLAN COMMITTEE

Background Documents

None