

PLANNING POLICY AND LOCAL PLAN COMMITTEE

20 DECEMBER 2023

REPORT OF THE DIRECTOR OF PLANNING

A.1 COMMENCING THE REVIEW OF THE LOCAL PLAN

(Report prepared by Paul Woods and Gary Guiver)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To advise the Planning Policy and Local Plan Committee of the legal and policy requirements to review Local Plans every five years and to accordingly seek its approval to commence the first mandatory review of the current Tendring District Local Plan. In doing so, this report provides initial advice on the likely scope and timeframe for the Local Plan review, sets out a series of overarching ‘guiding principles’ for the Committee’s consideration and seeks its agreement to carry out an initial ‘call for sites’ consultation exercise in early 2024.

EXECUTIVE SUMMARY

The Government requires Councils to review and update Local Plans every five years to ensure they remain up-to-date and effective, comply with latest national policy and are adjusted accordingly to respond to changing circumstances. Failure to keep a Local Plan up-to-date can, and does, result in Councils losing control of planning decisions, particularly if they begin to fall behind on housing land supply and delivery of new homes. Councillors will no doubt recall the period in the run up to the adoption of the current Local Plan when the Council was faced with numerous speculative, unplanned and unwanted residential development proposals – many of which obtained planning permission, on appeal, by the Planning Inspectorate – against the Council and the communities’ wishes. Keeping the Local Plan up-to-date in line with government requirements will enable the Council to avoid such circumstances arising again in the future – but it will still require the Council to take difficult decisions on the content of the updated Local Plan, particularly when it comes to allocating land to meet any longer-term development needs.

The ‘Tendring District Local Plan 2013-2033 and Beyond’ was formally adopted by the Council in two sections – Section 1 in January 2021 and Section 2 in January 2022. Planning legislation requires the Local Plan to be reviewed and updated where necessary at least every 5 years, in order for the policies to be considered up-to-date. **The Local Plan will need to be reviewed and updated by January 2026; i.e. within five-years of adopting the Section 1 Local Plan.**

The Government is proposing significant changes to the system for producing Local Plans through the Levelling Up and Regeneration Act 2023 designed to streamline and speed up the plan-making process but also to simplify the content of Local Plans and reduce the amount of detail contained within local policies. However, there is a ‘transition period’ within which Councils can still progress a

Local Plan review under the current arrangements so long as the updated Plan is submitted to the Secretary of State by June 2025.

The timetable for reviewing the Local Plan under the current system is therefore very tight, however Officers consider it both necessary and prudent to commence the review of the Local Plan under the transitional arrangements to avoid a situation by which the Council finds itself with an out-of-date Local Plan come 2026. Another advantage of progressing the Local Plan review under the current arrangements is that the Council can extend the life of the Local Plan through a focussed update of its policies and proposals, rather than having to re-write the Plan from scratch.

With that approach in mind, and to assist in scoping out the work required to review the Local Plan, Officers have undertaken a preliminary assessment of all the Policies in the current Local Plan to identify where amendments and updates might need to be considered in response to changes in national policy or legislation, changes on the ground (for example, proposals developments have been built), or where practical issues have arisen in the application of certain policies in the determination of planning applications. Initial consideration has also been given to the technical and background evidence that might need to be updated and reviewed to ensure the Local Plan continues to be based on robust and proportionate evidence – having regard to the cost and necessity of studies and assessments.

Officers have also developed a set of overarching ‘guiding principles’ for the Committee’s consideration which are designed to provide an initial focus and direction for the Local Plan review, but which can be kept under review in their own right as work progresses.

An indicative timetable for progressing the Local Plan review through the key stages of the plan-making process is set out in the main body of this report and will be reported back to the Committee in greater detail early next year, as part of an updated ‘Local Development Scheme (LDS) document’.

In reviewing and rolling forward the timescale of the Local Plan to 2041 or beyond, there will be a need to consider the requirement for further housing and employment land and other forms of development and to make provision for additional land for those purposes. Whilst it is anticipated that some of the developments in the current Local Plan (particularly the Tendring Colchester Borders Garden Community and the Hartley Gardens development in Clacton) will contribute to meeting the longer-term requirements, there is likely still to be a residual requirement (yet to be determined) that will require further land allocations.

To help inform the Council’s consideration of potential options and the availability of land across the district for different forms of development, Officers recommend the carrying out of an initial ‘call for sites’ consultation exercise in early 2024. This will be a focussed consultation, targeted mainly at landowners, developers and planning agents (but open to others) to invite proposals and suggestions for housing and mixed-use developments of different scales or commercial development as well as any community-led or environmental-led proposals for community facilities, habitat creation or open space.

RECOMMENDATION

That the Planning Policy and Local Plan Committee:

- a) notes the requirement for the Councils to review their Local Plan every five years, the changes that Government may introduce to the plan-making system and the potential implications for the District of Tendring, as explained in this report;**
- b) agrees for Officers to commence the mandatory five-year review of the Tendring District Local Plan under the current plan-making system with the aim of submission to the Secretary of State by June 2025 and adoption by January 2026;**
- c) considers the overarching ‘guiding principles’ set out in this report and agrees that these, with any agreed amendments, should underpin the focus and approach for the Local Plan review, but that these shall themselves be kept under review as work progresses;**
- d) notes that an updated Local Development Scheme (LDS), setting out more detail of the proposed timetable for the Local Plan review and the associated evidence base, will be updated and brought back to the Committee for approval in early 2024; and**
- e) authorises the Director (Planning) to run an initial ‘call for sites’ consultation exercise in early 2024, inviting landowners, developers planning agents and others to put forward sites, ideas and proposals for the Council’s consideration as options as part of the Local Plan review process.**

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

Ensuring the District has an up-to-date Local Plan is a high priority for the Council. 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. Since the adoption of the Local Plan, the Council has had greater power to resist speculative development, exercise greater control over the way development is delivered within the district and push towards achieving higher standards of quality.

The review of the Local Plan will be guided by the priorities established in the Council’s new Corporate Plan 2024-2028. The updated Local Plan will promote pride in our area by seeking to deliver decent housing and well-designed communities. The process of the review will take advantage of digital tools to ensure residents are able to effectively engage with the process.

The Local Plan will seek to improve access to skills, learning and training, and boost employment opportunities – particularly associated with Freeport East and the Garden Community. It will promote

a high-quality environment that creates spaces for leisure, wellbeing and healthy lifestyles as well as securing open spaces and community resources. Policies in the Local Plan will promote safe, healthy, well-connected and inclusive communities, and will champion the District's tourism offer and heritage assets.

Officers propose a proportionate and cost-effective approach to producing evidence to support the Local Plan, which will contribute to the financial sustainability of the Council.

RESOURCES AND RISK

The review and update of the Local Plan will be managed by the Council's Planning Policy Team utilising funds from the agreed Local Plan budget. This budget will be used to cover the cost of procuring expert evidence to inform and support the updated policies, as well as the cost of the independent examination of the Local Plan where Officers and, where necessary, expert consultants will defend the plan's policies and proposals in front of a government-appointed Planning Inspector.

Wherever possible, evidence will be produced in house by the Planning Policy Team. Where this is not possible, and external consultants are required to produce evidence, a proportional approach will be taken by Officers to ensure best value for money.

The deadline currently proposed by the Government to submit a Local Plan under the existing system is the end of June 2025. This will place considerable time pressure on the Council to completing the review and updating the Local Plan, but officers have prepared a programme of works that takes account of this deadline and plans to progress through each of the regulatory stages over the coming 18 months. The Department for Levelling Up, Housing and Communities have indicated during Officer briefings that there will be a degree of flexibility with the deadline if necessary, but have given no firm details. However, if the Council are unable to submit the updated Local Plan in time, the work undertaken over the coming 18 months will not be wasted and, along with any evidence produced during this time, can be used to inform and prepare a new-style Local Plan.

The preparation of a Local Plan is guided by legislation and regulations, which inform various stages of work and consultation that must be undertaken before the plan can be lawfully adopted. Third parties can apply for a Judicial Review if they feel the Council have acted unlawfully or have not followed the correct legal process. In order to mitigate the risk of Judicial Review, Officers in the Planning team will work closely with colleagues in Legal Services to ensure all relevant processes are adhered to throughout the programme of works, as well as following up-to-date advice from the Local Government Association's Planning Advisory Service.

LEGAL

Planning legislation and the NPPF 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 includes the Tendring District Local Plan 2013-2033 and Beyond Sections 1 and 2, as well as adopted Neighbourhood Plans and the Essex Minerals and Waste Local Plans. 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 ensure the Local Plan is reviewed, and updated where necessary, to ensure the development plan does not become out of date.

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. Early and ongoing engagement with these stakeholders will be important throughout the process of reviewing the Local Plan.

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.

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 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.

OTHER IMPLICATIONS

Area or Ward affected: All wards.

Consultation/Public Engagement: The Local Plan Review will involve the same statutory stages of Consultation and Public Engagement as the original preparation of the Local Plan. This will involve a 'call for sites' exercise early in the new year, followed by an Issues and Options consultation, a Preferred Options consultation (regulation 18) and Publication Draft consultation (regulation 19). Once submitted, if the Local Plan Inspector considers that main modifications are required to make the Plan sound, a further consultation on these modifications would be required.

PART 3 – SUPPORTING INFORMATION

Background

The Need to Review

Tendring's Local Plan (the Plan) was submitted for examination in 2017, following several years of preparation and public consultation. The Plan was prepared in partnership with Colchester Borough Council and Braintree District Council, with the shared Section 1 establishing the housing requirements for North East Essex and setting out a vision for a new Garden Community on the Tendring and Colchester Border. Section 2 of the Local Plan is specific to Tendring, and contains policies used when determining Planning Applications to guide the type, location, and quality of new development. Section 1 was adopted by full Council on 26th January 2021, and Section 2 was adopted by full Council on 25th January 2022.

To be effective plans need to be kept up-to-date. The National Planning Policy Framework (NPPF) states policies in local plans should be reviewed to assess whether they need updating at least once every 5 years, and should then be updated as necessary. Under regulation 10A of The Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) local planning authorities must review local plans, and Statements of Community Involvement at least once every 5 years from their adoption date to ensure that policies remain relevant and effectively address the needs of the local community.

Where there is not an up-to-date Local Plan, the NPPF requires Local Planning Authorities to grant planning permission unless the proposal conflicts with policies in the NPPF itself or where adverse impacts would significantly and demonstrably outweigh the benefits. This means that the Council would be expected to grant Planning Permission for sites that might not have otherwise been allocated for development, and the risk of speculative applications increases. In the past, not having an up-to-date Local Plan has resulted in the Council losing several appeals for large development schemes that members did not support.

Planning Reform

The Levelling Up and Regeneration Act 2023 was given Royal Assent in October of this year, and brings with it a new regulatory system for producing Local Plans. The procedures and content associated with new-style Local Plans will differ in significant ways from the existing system, and a headline ambition of the reforms is that Local Plans will be produced and adopted within 30 months.

However, there is uncertainty about when Local Planning Authorities (LPAs) will be able to begin producing new style Plans, and a scheme of phasing will be required to ensure the Planning Inspectorate has capacity to examine Plans within the required timeframes. The Department for Levelling Up, Housing and Communities (DLUHC) anticipates that the first new style Local Plans will begin being produced next year, but it is not clear which LPAs will be prioritised to be part of the early wave.

Due to the uncertainty around timeframes for being able to begin production of a new style Local Plan, and the risks associated with not having an up to date Local Plan, it is proposed that Officers begin the process of reviewing the Local Plan under the existing system. DLUHC have indicated a deadline of 30 June 2025 for submitting an old style Local Plan for examination.

The Updated Local Plan

The main purpose of the shared Section 1 of the adopted Local Plan is to facilitate the delivery of a Garden Community on the border of Tendring and Colchester. The Garden Community now has its own Development Plan Document, with policies specific to the that development, which has been submitted to the Secretary of State for Examination. Due to the advanced state of that document, and the ongoing joint working between TDC and Colchester City Council, there would be little benefit in undertaking a joint review of the Local Plan. Both Colchester and Braintree Councils have begun the process of reviewing and updating their Local Plans independently.

It is proposed, therefore, that the reviewed Local Plan will be a single document that will, on adoption, supersede the existing Sections 1 and 2. A policy will be required to facilitate continued cooperation with Colchester City Council around delivery of the Garden Community, and it is anticipated that the wording of this policy will be consistent between Tendring and Colchester's Local Plans.

North Essex Authorities

Colchester City Council have indicated through their committee that they intend to begin working on a new Local Plan to replace their current adopted Plan. Their new Plan will be led by a desire to maximise environmental benefits and bio-diversity net gain and will supersede both Sections 1 and 2 of their Local Plan once adopted.

Braintree District Council have indicated in discussion with TDC officers that they anticipate preparing and submitting a Plan for examination under the new plan-making system introduced by the Levelling Up and Regeneration Act 2023. As with Colchester's approach, their new Local Plan, once adopted, will supersede both Section 1 and 2 of their current Local Plan.

Call for Sites

An initial stage of preparing to review and update the Local Plan is to understand what land might be available for future development, by inviting landowners, promoters, and developers to submit their land to the Council for consideration. A 6-week consultation will be launched, seeking submissions of sites for housing, employment and other kinds of developments, as well as for the provision of green infrastructure and biodiversity net-gain.

In addition to information about the site such as land ownership, previous uses and any known constraints, those submitting sites will be asked to indicate the type of use they are proposing for the land, selecting from the following options:

- Housing/Mixed-Use Development:
 - Small – 1-29 homes
 - Medium 30-99 homes
 - Large 100-299 homes
 - Strategic/Mixed-Use – Short-Term (5-10 years): 300-799 homes (likely to include school/community facilities)
 - Strategic/Mixed-Use – Medium-Term (10-20years): 800-1,999 homes (likely to include school, community facilities and employment/commercial uses)
 - Strategic/Mixed-Use – Long-Term (20+ years): 2000+ homes (likely to include schools, community facilities, employment/commercial uses and major transport infrastructure).
- Business, Industrial or Warehouse/Logistics
- Retail or Leisure
- Gypsy or Traveller Accommodation
- Renewable Energy Installations
- Open Space
- Habitat Creation
- Burial
- Other

Once the 6 weeks have ended, officers will assess each of the submitted sites to understand their suitability and consider their potential for meeting future need for growth. Sites that are assessed as having genuine development potential can then be considered as part of the broader strategy of the Local Plan.

The recommendations above include the proposal that the Committee authorises a call-for-sites exercise to be undertaken in the new year, which will enable the responses to inform the Issues and Options consultation document which be brought to the committee for consideration in the Spring.

Work Programme

The process for updating the Local Plan is closely linked to the regulatory stages of consultation that must take place before the Plan can be submitted. Officers currently anticipate the following high-level programme to enable the updated Plan to be submitted before the end of June 2025.

- **Spring 2023:** Issues and Options Consultation – early stage engagement to enable residents and other stakeholders to comment on the scope and purpose of the review.
- **Autumn 2024:** Regulation 18 Preferred Options Consultation – statutory consultation on the first draft of the reviewed Local Plan.
- **Spring 2025:** Regulation 19 Publication Draft Consultation – a further statutory consultation on an updated draft, responding to representations received at Regulation 18.

- **June 2025:** Submission

The Local Development Scheme (LDS) is a document 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 the broad programme of work and how the Council proposes to resource and manage it. The LDS was last updated at the beginning of 2023, but in light of the Local Elections in May, the progress of the Government's Planning reforms, and the commencement of the Local Plan review at the start of 2024, the timetable should now be updated. The LDS must be kept up-to-date, and it is proposed that an updated LDS that reflects the timetable set out above will be brought back to the committee early in 2024.

Evidence Base

The existing Evidence Base will need to be updated to inform the review of the Local Plan, to ensure that the strategies and policies within it are sound and legally compliant when examined by a Planning Inspector. It is proposed that a proportionate and affordable approach is taken to producing technical evidence – using external consultants when necessary, and producing evidence in-house, when possible, to ensure best value for money for Tendring's residents at a time of significant financial pressure for the Council.

Officers will keep the list of required evidence under review, to ensure the evidence produced is up-to-date and fit for purpose. A full review of the Council's evidence base, indicating which documents will need to be updated to inform the Local Plan review, will be set out in the LDS.

Guiding Principles

In order to provide an initial focus and direction for the review of the Local Plan, officers have developed a set of overarching 'guiding principles' for the Committee's consideration. These principles indicate areas of the Plan which are working well and will be protected or enhanced, and highlights areas that are likely to require updating. They have been informed by discussions with members, colleagues across the Planning department, and the initial policy review exercise included at Appendix 2.

The 'guiding principles' are set out in detail at Appendix 1. The first 6 principles set out the process and format of the reviewed Local Plan, setting out the approach to updating technical evidence, the timeframe the updated Local Plan will cover and the format the document will take (following the same broad structure as the adopted Plan). The following 3 principles deal with broad issues such as the approach to the Garden Community, identifying the Strategic Policies in the Local Plan and the Vision and Objectives chapter.

The remaining 23 principles deal with specific policies or topics within the Local Plan. A number of principles focus on housing requirement, the kinds of housing that will be required, the kinds of settlements that will be able to accommodate new housing development (retaining and reviewing the Settlement Hierarchy in the adopted Local Plan), and the quality of design expected from new housing developments. There are also principles that speak specifically about the proposed

approach to Strategic Green Gaps, landscape character and impact, climate change, ecology, and open spaces. And finally, a number of principles discuss economic issues such as employment land and Freeport East, town centres and retail, and holiday and caravan parks.

As a whole, this set of 'guiding principles' address what officers consider to be the key issues likely to arise during the review of the Local Plan. However, it will be important for the principles will be kept under review in their own right as work progresses – particularly in light of consultation responses received at the various stages of community engagement outlined above, and as new evidence becomes available.

APPENDICES

A.1 Appendix 1 – Guiding Principles for the review of the Local Plan

A.1 Appendix 2 – A preliminary review of the existing Local Plan policies.

BACKGROUND PAPERS

None.