

TENDRING COLCHESTER BORDERS GARDEN COMMUNITY JOINT COMMITTEE

5 SEPTEMBER 2024

A.1 EXAMINATION IN PUBLIC: INSPECTOR MODIFICATIONS FOR CONSULTATION

(Report prepared by Amy Lester (Garden Community Planning Manager))

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To advise the Tendring Colchester Borders Garden Community (TCBGC) Joint Committee of the modifications to the Development Plan Document (DPD) for the Garden Community that the Planning Inspector now requires the Councils to publish for consultation as part of the process of independent examination.

EXECUTIVE SUMMARY

The purpose of the DPD is to plan effectively for growth within the TCBGC over the long term. In 2021, Tendring District Council (TDC) and Colchester City Council (CCC) both agreed to formally adopt the 'North Essex Authorities' Shared Strategic Section 1 Local Plan' (Section 1 Local Plan) which, amongst other things, identifies the broad location of the Garden Community and sets out the Strategic Policies and the overarching requirements and expectations that it will need to meet. The DPD seeks to set an appropriate and 'sound' strategy for the future development of the TCBGC. The DPD has been prepared by CCC and TDC as the Local Planning Authorities, in partnership with Essex County Council (ECC).

In September 2023 the DPD was submitted for to the Secretary of State in line with Regulation 21 of the Town and Country Planning (Local Planning) (England) regulations 2012 to begin the process of independent examination. This followed the Regulation 19 stage of public consultation as carried out in May-June 2023. Planning Inspector, Mr. Graham Wyatt, was subsequently appointed to examine the DPD, and public hearings were held in May 2024.

In advance of the hearings, the Inspector requested that the Councils prepare, and publish on the [Examination Website](#), a 'Schedule of Suggested Modifications' listing any changes to the DPD that the Councils would wish him to consider as potential modifications following a review of the Regulation 19 representations, the preparation of Statements of Common Ground (SoCG) with Statutory Bodies and key stakeholders and through the identification of errors in the drafting of the Submission Version of the DPD (i.e. typos). Members will recall that, at its meeting of the 9th October 2023, the TCBGC Joint Committee agreed that the Garden Community Planning Manager in consultation with TDC Director of Planning, CCC Executive Director of Place, ECC Director for Sustainable Growth, and Chairman and Vice-Chairman of the Tendring Colchester Borders Garden

Community Joint Committee, submit minor suggested modifications to the DPD for the Planning Inspector's consideration ahead of the examination in public (note that this did not extend to making more significant changes).

None of the modifications suggested by the Councils through the 'Schedule of Suggested Modifications' were significant in that they did not seek to change the substance or intent of DPD policy.

As part of each hearing session the Inspector reviewed and asked for comment on each modification suggested, relating to the relevant policy being considered as part of that hearing session. Following the hearings the Inspector asked the Councils for an updated 'Schedule of Suggested Modifications' based on the discussions held at the hearings.

The Inspector has subsequently issued his own 'Schedule of Modifications', as appended to this report (Appendix 1), and has instructed the Councils to proceed to consultation. The modifications issued by the Inspector have been summarised in Part 3 of this report. They do not vary significantly from the Suggested Modifications that were discussed at the hearings.

The Joint Committee is asked to note the content of the Inspector's 'Schedule of Modifications', prior to their publication for consultation for a period of six weeks in September/October 2024 in accordance national requirements. The Councils will publish the modifications alongside an updated Sustainability Appraisal (SA), and an updated Habitats Regulations Assessment (HRA) to take account of them.

Following conclusion of the consultation the Inspector will consider the SA, HRA and all representations made in response to the modifications. At the end of the Examination the Inspector will send a report to the Councils recommending whether or not the DPD is legally compliant and sound (with or without some or all of the proposed modifications) and thus whether they can proceed to formally adopt the plan.

RECOMMENDATION

That the Tendring Colchester Borders Garden Community Joint Committee -

- 1. notes the content of this report and the Inspector's Schedule of Modifications (attached at Appendix 1); and**
- 2. notes the next stage of the examination process, which is to publish the Schedule of Modifications for public consultation.**

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

Members are reminded that the TCBGC is a corporate priority for all three of the Councils represented on the Committee and a key proposal in the Section 1 Local Plan for North Essex, as adopted by both Tendring District Council and Colchester City Council.

RESOURCES AND RISK

Consultation on the modifications to the DPD as received from the Inspector is a statutory stage of the plan making process. There is a risk that should the DPD not be adopted in an appropriate timescale, the ongoing ability for the Councils' to manage growth within the TCBGC area in a planned manner will be compromised.

The overall Garden Community project is being managed by the three authorities through agreed budgets and through appropriate structures to ensure input and overview, not only from the Joint Committee, but also from the lead elected Councillors, Senior Officers, Planning Officers, Transport Officers, Project Team and the independent 'Community Liaison Group' specifically set up to provide a community input into the project. There are also structures in place for constructive engagement with the lead developers Latimer/Clarion and Mersea Homes, including an ongoing 'Planning Performance Agreement' (PPA) which establishes and secures funding to cover the cost of meetings and dedicated resources to facilitate the pre-application process and the assessment and determination of planning applications.

It is considered the Councils' approach to plan preparation, engagement and consultation to date has allowed the public and other stakeholders to have a significant opportunity to input into the process and, where appropriate, to shape the DPD. Importantly, however, consultation in this context does not mean that a consensus of opinion has been reached in all cases, and it is appropriate to recognise there remains opposing views to some elements of the DPD, either from residents and local stakeholders, local parish and town councils, site promoters or all. It is considered that the thorough process the Councils have engaged in over the last few years, which has followed the requirements of legislation and the Councils Statement of Community Involvement (SCI) documents, has allowed this to happen in an effective and meaningful manner.

A delay in the process of the Examination proceeding to consultation on the modifications is likely to pose a risk to the timetable for the overall Garden Community project and the delivery of the first phase of homes and associated infrastructure. Because the Section 1 Local Plan requires that planning permissions are not to be granted until the DPD has been completed and adopted, a delay to its adoption would have a knock-on effect to delivery on the ground.

Whilst the receipt of the Inspector's Schedule of Modifications does not constitute a judgement on the legal compliance and soundness of the DPD, it is a positive step in the examination process.

Furthermore, the fact that the modifications provided by the Inspector do not vary significantly from those that were discussed at the examination hearings, would suggest that no fundamental issues requiring more significant changes have been identified at present. However, it will ultimately be for the Inspector to confirm whether or not this is the case once he has considered any further representations on the modifications and determined whether or not the DPD, with or without certain modifications, is legally compliant and sound.

LEGAL

The Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) 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 or DPD and the independent examination.

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 Submission Version Plan for the Garden Community is a 'Development Plan Document' which will carry the same legal status as a Local Plan and which, on adoption, would sit with the Local Plan (including the Essex Minerals and Waste Local Plans) as part of the statutory 'Development Plan' for both Tendring and Colchester. The plan-making process and the associated legislation, regulations and national planning policy and guidance applicable to the Plan for the Garden Community are essentially the same as those applicable to the preparation and review of Local Plans.

Section 33A of the 2004 Act places a legal duty upon local authorities and other public bodies to engage constructively, actively and on an on-going basis on strategic matters of cross-boundary significance (which includes housing supply) to maximise the effectiveness of Local Plan preparation and also applies to the Plan for the Garden Community. This is known as the 'Duty to Cooperate'. Paragraphs 24 to 27 of the National Planning Policy Framework (NPPF) stress that close cooperation between District Councils and County Councils (in two tier areas) will be critical to ensure that both tiers are effective when planning for strategic matters and necessary infrastructure. To date, TDC and CCC have complied with the Duty to Cooperate, as confirmed by the government Planning Inspector in his final post-examination report which allowed the Councils to formally adopt the Shared Section 1 Local Plan. ECC is continuing to carry out its functions properly by engaging in the plan-making process. The ongoing cooperation between Officers and Members of the Councils and the positive engagement with wider stakeholders on this project, culminating in the setting up of a Joint Committee is a positive demonstration of continued compliance with the Duty to Co-operate.

Section 19 of the 2004 Act requires local planning authorities to carry out a 'Sustainability Appraisal' (SA) for Local Plans and other Development Plan Documents and consider the consequence of reasonable alternatives, during their preparation and, in addition, prepare a report of the findings of

the SA. More generally, section 39 of the Act requires that the authority preparing a Plan must do so “with the objective of contributing to the achievement of sustainable development”. The purpose of a SA is to ensure that potential environmental effects are given full consideration alongside social and economic issues. A SA was produced for the Submission Version Plan and has been updated to take account of the Inspector’s modifications. The updated SA will be published for consultation alongside the modifications.

The Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) 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 or Development Plan Document and the independent examination.

Like a Local Plan, the Plan for the Garden Community is being tested, through the examination process, to meet both legal requirements and the ‘tests of soundness’ set out in the latest NPPF which was last updated in 2021. The tests of soundness are:

- a) Positively prepared – providing a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs; and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;
- b) Justified – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;
- c) Effective – deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and
- d) Consistent with national policy – enabling the delivery of sustainable development in accordance with the policies in this Framework and other statements of national planning policy, where relevant.

Because the Shared Section 1 of the Local Plan which has already been examined and adopted sets out specific policy requirements for the Garden Community and the content of the DPD, the Councils have sought to demonstrate to the Inspector through the examination that the Plan also meets with those requirements. The Plan must also be prepared in accordance with the Councils LDS and SCI to be found sound, the engagement process has followed the requirements of legislation and the Councils SCI documents, and the LDS updated as required.

Only on confirmation of the legal compliance and soundness of the Plan following the examination process, can the Councils proceed to formal adoption.

OTHER IMPLICATIONS

Area, Ward or Divisions affected: The Garden Community development will affect land within both TDC and CCC authority boundaries, associated ECC Divisions and the corresponding local electoral wards of Elmstead Market, Ardleigh, Greenstead and Wivenhoe. The economic, social and environmental impacts of the development are likely to be felt, directly or indirectly, over a wider area – as reflected in its status as a strategic proposal in a Shared Section 1 Local Plan for North Essex.

Equality and Diversity: The Submission Version Plan for the Garden Community (with or without the Inspector's modifications) contains policies aimed at promoting inclusiveness, equality and diversity. These include policies to ensure a mix of housing sizes, types and tenures to meet the requirements of different groups in society including people with disabilities or mobility issues, people with low incomes, people in need of care and gypsies and travellers. There are also policies aimed at ensuring accessibility to jobs, shops, services and facilities can be achieved by a variety of transport modes with priority given to walking, cycling, rapid transit, public transit and mobility vehicles whilst still enabling access by private vehicles. Policies around public realm and green infrastructure also promote inclusive environments and accessibility for people with different disabilities.

The Public Sector Equality Duty applies to the Councils when it makes decisions. The duty requires the Council to have regard to the need to:

- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful.
- (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
- (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).

Crime and Disorder: The Submission Version Plan (with or without the Inspector's modifications) aims to deliver a new community that promotes employment, skills and training opportunities as well as health and wellbeing. Its policies require design and architecture to minimise the opportunities for crime and working with Essex Police in the drawing up of detailed plans. The Councils have given careful consideration to all the comments received at Regulation 18 stage and in drafting the

Submission Version Plan for Regulation 19 stage, ensuring that the Plan continues to address issues around crime and disorder.

Health Inequalities: The Submission Version Plan (with or without the Inspector's modifications) has been drawn up through positive engagement with health stakeholders, and policies within it promote health and wellbeing and embed the Healthy New Towns and active design principles. It has been important for the Councils to give careful consideration to all the comments received at the Regulation 18 stage and in the Submission Version Plan for the Regulation 19 stage, ensuring that the Plan continues to address issues around health inequalities.

PART 3 – SUPPORTING INFORMATION

SUMMARY OF INSPECTOR'S MODIFICATIONS

The Inspector has made four (4) changes to the Councils 'Schedule of Suggested Modifications – Post Hearing Update'. These are to GC Policy 2 'Nature', GC Policy 8 'Sustainable Infrastructure' and GC Policy 9 'Infrastructure Delivery, Impact Mitigation and Monitoring'. Changes are as follows:

GC Policy 2 – Nature

- **MM90 - Part D (to become Part E) 'Biodiversity Net Gain'**

Inspector's Modification:

Remove reference to ambition to achieve BNG of 15%, as such remove last sentence of first point of Part D on page 40 of the DPD as follows:

~~As such an ambition is to achieve BNG of 15% on average across the whole masterplan.~~

Inspector's Reason:

The minimum requirement of 10% will be met across the masterplan as required by Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021).

GC Policy 8 - Sustainable Infrastructure

- **MM71 - Part A 'Net Zero Carbon'**

Inspector's Modification:

The Inspector has changed the timeframe for an agreed strategy to achieve net zero in acceptable circumstances from '*within a reasonable timeframe*' to '*within five years of occupation*'. As such Part A on page 117 of the DPD be amended as follows:

All buildings ~~must~~ shall be net zero in operation at occupation or, in exceptional circumstances, have an agreed strategy to achieve net zero within five years of occupation, and achieve net zero operational energy balance ~~onsite~~ across the Garden Community.

Inspector's Reason:

At the request of Latimer and as discussed on Day 1 of the hearing sessions under Main Matter 8.

- **MM72 - Part A 'Net Zero Carbon'**

Modification **not** agreed by the Inspector:

The Councils had, through the 'Schedule of Suggested Modifications' and their hearing statement for Main Matter 8, put forward for consideration that the space heating, energy consumption and renewable energy generation standards under Part A of GC Policy 8 be updated to reflect the findings of the most up-to-date technical evidence base and ensure alignment with the Essex Design Guide. The suggested modification was discussed on Day 1 of the hearing sessions under Main Matter 8.

Inspector's Reason:

The Inspector has **not agreed** the Councils suggested modification as the Essex Design Guide is not part of the Development Plan. Therefore, the suggested modification is not considered reasonable and would be likely to create issues in relation to deliverability. This modification will therefore not go forward for consultation and the standards under Part A of GC Policy 8 will remain in the DPD as outlined within the Submission Version Plan.

GC Policy 9 'Infrastructure Delivery, Impact Mitigation and Monitoring'

- **MM91 - Part A 'Infrastructure Delivery Mechanism'**

Inspector's Modification:

Remove all references to Community Infrastructure Levy.

Inspector's Reason:

The CIL charging schedule will be considered separately from the DPD.

In addition to the above modifications, the Inspector has agreed that all other modifications within the 'Schedule of Suggested Modifications - Post Hearing Update' should proceed to consultation. No other modifications have been made by the Inspector.

SUSTAINABILITY APPRAISAL

Under the Planning and Compulsory Purchase Act 2004, a Sustainability Appraisal (SA) is mandatory for Development Plan Documents (DPDs). It is also necessary to conduct an environmental assessment in accordance with the Strategic Environmental Assessment (SEA) Regulations (as amended). The SEA Regulations remain in force post-Brexit and it is a legal requirement for the Plan to be subject to SA and SEA throughout its preparation. SA and SEA are tools used at the plan-making stage to assess the likely effects of the plan when judged against reasonable alternatives.

Land Use Consultants (LUC) has carried out an update to the SA of the DPD, incorporating the Inspector's modifications, on behalf of the Councils (Appendix 2). Previously LUC carried out the SA for the Section 1 Local Plan and the SA for the Submission Version of the DPD. The SA report is appended to this Committee report so that members are informed of the likely effects of the Plan and why alternatives have been discounted. The SA report must be published for public consultation alongside the plan to which it relates.

The SA appraised the policies and reasonable alternatives and has considered the Plan's cumulative effects. The Plan must be in conformity with the adopted Shared Section 1 Local Plan, which limits the alternatives for both the Plan's policies and the masterplan. Options that are not in conformity with the Section 1 Local are not reasonable alternatives.

Taken as a whole, the SA concludes that the DPD, with the Inspector's modifications, sets out a positive plan for the achievement of the Garden Community. The policies of the plan set a high standard which development will be required to meet, and it is considered consistent with the principles of sustainable development.

MODIFICATIONS CONSULTATION SUMMARY PLAN

Officers intend to consult on the modifications for six weeks during September and October 2024. A downloadable PDF of the 'Inspector's Schedule of Modifications' will be made available on the engagement website and in paper form in TDC and CCC council offices and local libraries, alongside the necessary statutory documentation (for example, the SA).

Anyone wishing to comment on the modifications online will be directed to a web page where the modifications will be held. This web page will use consultation software that complies with the legal requirements of the consultation.

In addition to the Councils carrying out their statutory consultation requirements, a range of non-digital and digital publicity activities will be undertaken, this could include where appropriate and considered necessary:

Non-digital activity:

- Notice/Advert in the Daily Gazette (Colchester) and Clacton Gazette

Digital activity:

- E-newsletters
- Non-paid social media on Facebook, Twitter, and LinkedIn
- Web banners on Council websites

The consultation will be open to all. It is not in any way restricted to those who participated in the examination hearings or made representations previously.

The Committee is asked to note the Inspector's modifications and the next stage of the examination process, which is to publish the modifications for consultation. The Councils cannot change the content of the Inspector's modifications or refuse to proceed with consultation; however if Members of the Committee or other Councillors disagree with, or have comments on, the modifications, they are free to participate in the consultation and make representations like any other member of the public or interested party.

Following the consultation, the Inspector will consider any representations received and will thereafter issue his report confirming whether or not the DPD is legally compliant and sound (with or without some or all of the proposed modifications) and thus whether the Councils can proceed to formally adopt the plan. The final decision to formally adopt the DPD, as modified, will, in due course, lie with the Members of Full Council at Tendring District Council and Colchester City Council (the Local Planning Authorities) following a recommendation of the Joint Committee.

APPENDICES

Appendix 1: Inspector's 'Schedule of Modifications' to the DPD to be published for consultation

Appendix 2: Sustainability Appraisal Update – August 2024

Appendix 3: Habitats Regulations Assessment – Addendum July 2024

BACKGROUND PAPERS

- [Schedule of Suggested Modifications \(26th April 2024\)](#)
- [Schedule of Suggested Modifications – Post Hearing Update \(3rd June 2024\)](#)

Appendix 1: Inspector's Schedule of Modifications to the DPD to be published for consultation

Available as separate document

Link:

<https://talk.tcbgardencommunity.co.uk/27450/widgets/77995/documents/65774>

Appendix 2: Sustainability Appraisal Update – August 2024

Available as separate document

Link

<https://talk.tcbgardencommunity.co.uk/27450/widgets/77995/documents/66255>

Appendix 3: Habitats Regulations Assessment – Addendum July 2024

Available as separate document

Link:

<https://talk.tcbgardencommunity.co.uk/27450/widgets/77995/documents/65773>