

# TENDRING COLCHESTER BORDERS GARDEN COMMUNITY JOINT COMMITTEE

5 SEPTEMBER 2024

## A.2 DELEGATION TO OFFICERS IN RESPECT OF EIA SCOPING REQUESTS

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

### PART 1 – KEY INFORMATION

#### PURPOSE OF THE REPORT

This report seeks the agreement of the Tendring Colchester Borders Garden Community Joint Committee (“the Joint Committee”) to delegate specific decision making powers to Officers related to determining the scope of environmental issues needing to be covered in an Environmental Statement under the Town and Country Planning (Environmental Impact Assessment) Regulations 1999 (as amended) that, in due course, will accompany the future planning application for the Garden Community.

#### EXECUTIVE SUMMARY

The terms of reference for the Joint Committee at paragraph 4.6 permits the powers of delegation contained in section 101(2) of the Local Government Act 1972, to be exercised. To date a Scheme of Delegation had not been proposed due to the nature of the decision-making responsibilities so far resting with the Joint Committee – which have been mainly focussed on the plan-making process in respect of the Development Plan Document (DPD). The strategic and policy setting decisions for the Garden Community, including endorsement of the Development Plan Document and the granting of relevant planning permissions, are decisions for the elected Members of the Joint Committee rather than Officers, given the significance of the development and its cross-border nature.

There are however planning-related functions of an operational and technical nature that require speedy resolution and which, for most other developments, are typically delegated to Officers through an agreed Scheme of Delegation. With the DPD heading into the final stages of the plan-making process, the Garden Community project will soon progress into the Development Management phase within the planning process and the consideration and determination of planning applications. In light of advanced preparatory work, a formal request for a ‘Scoping Opinion’ to determine the scope of the environmental issues to be covered in an Environmental Statement, to be submitted in support of a future principal planning application for the Garden Community, has been submitted by the lead developers for the Councils’ consideration. This is in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 1999 (as amended), and the regulations create a statutory basis for the Councils to provide a timely response.

Responding to an EIA scoping requests is a technical matter that is normally delegated to Officers for which there are also statutory timescales. The recommendation of this report seeks the Joint

Committee's agreement to exercise the powers of delegation to enable the timely determination of the Scoping Opinion request to be taken at Officer level. Members should note that where an authority (or, in this case, the Joint Committee) has adopted a scoping opinion following the request of an applicant, additional information can be requested at a later date (<https://www.legislation.gov.uk/ukxi/2017/571/regulation/15>).

As anticipated in the Joint Committee's Terms of Reference, a comprehensive Scheme of Delegation to Officers will be prepared for the Committee's consideration and approval as the Garden Community project progresses from the policy plan making phase to the Development Management phase. This is likely to include, amongst others, applications for minor or non-material amendments (NMA) to already approved developments and matters relating to enforcement action, advertisement consent and Tree Preservation Orders (TPOs).

Generally, it is considered best practice by the Planning Advisory Service (the Government's appointed experts in planning matters) that approximately 95% of planning applications are determined by Officers – however for the Garden Community development, it is appropriate for important decisions to be taken by the Joint Committee and therefore only selected types of decisions of a more minor, technical and time constrained nature are likely to be suggested for delegation to Officers in the future.

A comprehensive Scheme of Delegation to Officers will therefore be brought to a future meeting of the Joint Committee for consideration and agreement. This will allow the smooth running of Council functions and timely determinations and an efficient turnaround of certain planning matters aligned with the government's statutory targets.

## **RECOMMENDATION**

**That the Tendring Colchester Borders Garden Community Joint Committee;**

- (a) exercises its powers of delegation in accordance with its Terms of Reference and in accordance with Section 101(2) of the Local Government Act 1972 and agrees to delegate authority to the Director of Planning for Tendring District Council, the Deputy Chief Executive and Executive Director of Colchester City Council and the Director for Sustainable Growth of Essex County Council to determine, through joint agreement, the scope of the environmental issues to be covered in an Environmental Statement under the Town and Country Planning (Environmental Impact Assessment) Regulations 1999 (as amended); and**
- (b) agrees that should joint agreement not be reached by the Officers of the three authorities, acting under their delegated authority, then the response to the request for a scoping opinion will be brought to the Joint Committee for determination.**

## **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**

There are no financial implications arising from this report other than a saving in cost that may be incurred if Officer delegation is not agreed and a formal meeting of the Joint Committee needs to be set up solely to deal with the EIA scoping opinion in a timely manner

The alternative to having an appropriate Scheme of Delegation is to have all planning-related decisions taken by the Joint Committee. This would not be workable in practice and would be contrary to how the planning system is designed to work. This approach would not allow for timely decision making and would not allow the Councils to meet their statutory obligations with regards to speed of decision making – particularly on matters such as EIA screening or scoping opinions. It is however consistent with the delegations and terms of reference for the Joint Committee that the most significant decisions relating to the DPD and the principal planning applications for the Garden Community development are taken by elected Members.

There is a risk that should certain applications not be considered and certain decisions not taken in an appropriate timescale, the ongoing ability for the Councils to manage growth within the TCBGC will be compromised. Delay in the determination of applications would pose a risk to the Local Plan timetable for the overall Garden Community project and the delivery of the first phase of homes and associated infrastructure.

### **LEGAL**

The functions and scope of the Joint Committee were agreed by the Full Councils of TDC, CCC and ECC and a formal agreement made under Section 28 of the Planning and Compulsory Purchase Act 2004. The delegated functions of the Joint Committee are:

- (i) Planning Functions related to preparing for plan making through the Development Plan Document (DPD) process; and
- (ii) Development Control and determination of planning applications for TCBGC.

Paragraph 4.6 of the Joint Committee's approved Terms of Reference permitted the exercise of the powers of delegation as set out in accordance Section 101(2) of the Local Government Act 1972 to enable a Scheme of Delegation to Officers to be agreed.

This report seeks to ensure that there is clarity of the decision-making powers between the Joint Committee and Officers, and enables the Councils to meet its requirements for the determination of planning applications. In this instance, the Committee is being asked to agree delegated powers in respect of scoping opinions in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 1999 (as amended).

## 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.

**Consultation/Public Engagement:** No public consultation has been undertaken with regard to the 'Scheme of Delegation for Officers'. However, it is important to recognise that the work of the Joint Committee and the determination of planning applications will still involve public consultation, statutory and otherwise. All environmental and equality considerations are taken into account through plan making and individual decision making.

## PART 3 – SUPPORTING INFORMATION

### ENVIRONMENTAL IMPACT ASSESSMENT

The process of Environmental Impact Assessment in the context of town and country planning in England is governed by the [Town and Country Planning \(Environmental Impact Assessment\) Regulations 2017 \(the '2017 Regulations'\)](#).

#### **What is the purpose of Environmental Impact Assessment?**

The aim of Environmental Impact Assessment is to protect the environment by ensuring that a local planning authority when deciding whether to grant planning permission for a project, which is likely to have significant effects on the environment, does so in the full knowledge of the likely significant effects, and takes this into account in the decision-making process. The regulations set out a procedure for identifying those projects which should be subject to an Environmental Impact Assessment, and for assessing, consulting and coming to a decision on those projects which are likely to have significant environmental effects.

#### **What are the stages of Environmental Impact Assessment?**

There are five broad stages to the process:

- *Screening*  
Determining whether a proposed project falls within the remit of the Regulations, whether it is likely to have a significant effect on the environment and therefore requires an assessment.

- *Scoping*  
Determining the extent of issues to be considered in the assessment and reported in the Environmental Statement. The applicant can ask the local planning authority for its opinion on what information needs to be included (which is called a 'scoping opinion'). **It is this stage that has currently been reached with submission of a Scoping Opinion request.**
- *Preparing an Environmental Statement*  
Where it is decided that an assessment is required, the applicant must prepare and submit an Environmental Statement. The Environmental Statement must include at least the information reasonably required to assess the likely significant environmental effects of the development listed in regulation 18(3) and comply with regulation 18(4). The applicant is responsible for the preparation of the Environmental Statement.
- *Making a planning application and consultation*  
The Environmental Statement (and the application for development to which it relates) must be publicised electronically and by public notice. The statutory 'consultation bodies' and the public must be given an opportunity to give their views about the proposed development and the Environmental Statement.
- *Decision making*  
The Environmental Statement, together with any other information which is relevant to the decision, and any comments and representations made on it, must be taken into account by the local planning authority in deciding whether or not to grant consent for the development.

An applicant is not required to consult anyone about the information to be included in an Environmental Statement. However, they may ask the local planning authority for its formal opinion on the information to be supplied in the Environmental Statement (a "Scoping Opinion") and this has been undertaken in this case. This allows the Councils to clarify what they consider the main effects of the development are likely to be and, therefore, the aspects on which the applicant's Environmental Statement should focus.

The application for a Scoping Opinion was submitted on the 22 July 2024. In accordance with statutory determination timescales the Councils must provide their opinion within 5 weeks (or longer if agreed in writing with applicant) of receiving a request. The opinion should be proportionate, tailored to the specific characteristics of the development and the main environmental features likely to be significantly affected. Officers are in the process of securing an extension of time with the applicant to allow the Joint Committee to exercise its powers of delegation to allow Officers to determine the scope of the environmental issues to be covered in an Environmental Statement.

**APPENDICES**

None

**BACKGROUND PAPERS**

None.