

# TENDRING COLCHESTER BORDERS GARDEN COMMUNITY JOINT COMMITTEE

1 MAY 2025

## A.1 DEVELOPMENT PLAN DOCUMENT - ADOPTION

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

### PART 1 – KEY INFORMATION

#### PURPOSE OF THE REPORT

To seek the Joint Committee's recommendation that the TCBGC Development Plan Document (DPD), with specific modifications, is formally adopted by Tendring District Council and Colchester City Council, following receipt of the Planning Inspector's final examination report.

#### EXECUTIVE SUMMARY

**Following examination hearings in May 2024, and consultation on the recommended Modifications in September/October 2024, the Planning Inspector has issued his Final Report (Appendix 1) on the soundness and legal compliance of the DPD. With the incorporation of the Inspector's final set of Main Modifications (Appendix 2), the DPD has been found to be sound and legally compliant. This conclusion to the examination now gives the Councils the ability and authority to proceed to formally adopt the Plan.**

Adoption of the DPD will provide an up to date, robust and sustainable basis for guiding future growth and development within the Garden Community – with future planning applications being considered and determined, by the Joint Committee, against policies and proposals within the DPD in decision-making.

The modifications required by the Inspector do not depart substantially from those that were reported to the joint Committee on 5<sup>th</sup> September 2024 and subsequently published for consultation. The Inspector has however highlighted four Main Modifications as being of particular significance within the summary of his report, these being:

- Amending GC Policy 1 to clarify that should the provision of the Park and Choose facility be located south of the A133 it should not prejudice the full and comprehensive expansion needs of the University of Essex (UoE). **MM11**
- Amending GC Policy 2 to ensure that the minimum requirement of 10% Biodiversity Net Gain (BNG) is met across the masterplan area as required by current legislation. **MM90**
- Amending GC Policy 7 to ensure that the DPD carries forward the requirements of the North Essex Authorities Shared Strategic Section 1 Plan 2021 (NEASSS1P) to secure funding and delivery of the Rapid Transit System. **MM60**

- Removing reference to a potential future Community Infrastructure Levy ('CIL') charging schedule, which would be subject to a separate independent examination. **MM91**

Also, four proposed Modifications that had been the subject of consultation, have been removed by the Inspector from his final Main Modifications; those being MM14-MM17 which relate to amendments to the DPD Policies Map. These have been removed as the Policies Map is not defined in statute as a Development Plan Document and therefore the Inspector does not have the power to recommend Main Modifications to it. Notwithstanding this, those changes are required to correct typographical errors and ensure that the relevant policies are effective, and the Inspector notes the need to implement the changes. The Policies Map will therefore still be updated accordingly to reflect the changes that had been published for consultation.

With the exception of the above noted removal of MM14-MM17 from the recommended Modifications relating to the Policies Map, all other Main Modifications recommended by the Inspector remain consistent with those published for consultation. The Main Modifications ensure that the plan is positively prepared, justified, effective and consistent with national policy. The DPD has therefore been modified to reflect the Inspector's Main Modifications, and the Committee is asked to consider the finalised DPD and to recommend to Full Council at Tendring District Council and Colchester City Council its formal adoption.

## **RECOMMENDATION**

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

- a) notes the outcome of the examination of the Tendring Colchester Borders Garden Community Development Plan Document (DPD) as set out within the Inspector's final report (attached as Appendix 1) and final schedule of Main Modifications (attached as Appendix 2) and the conclusion that the DPD, with the Main Modifications, is legally compliant, meets the government's tests of soundness and can proceed to formal adoption; and**
- b) agrees that the modified version of the Development Plan Document (DPD) and the accompanying Policies Map, as attached at Appendix 3 and Appendix 4 to this Report, be referred to Full Council at both Tendring District Council and Colchester City Council with a recommendation to agree formal adoption.**

## PART 2 – IMPLICATIONS OF THE DECISION

### DELIVERING PRIORITIES

Members of the Committee are reminded that the Tendring Colchester Borders Garden Community 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

Under the plan-making regulations, the Councils would not be able to formally adopt the DPD contrary to the Inspector's findings, i.e. without first making the specified modifications set out in Appendix 2. Therefore, the only alternative option to lawfully adopting the DPD with the Inspector's modifications (as recommended to the Committee through this report) would be to withdraw the DPD and either begin the plan-making process again or to otherwise abandon the process.

However, the Garden Community is allocated as a broad location for development in the adopted Section 1 Local Plan and the proposal still forms part of the statutory development plan – with an expectation of the development coming forward and contributing towards the growth of Tendring, Colchester and North Essex up to 2033 and beyond. Therefore, the alternative of not proceeding with the adoption of the DPD would leave the Councils in a vulnerable position going forward without a formally endorsed framework of detailed policies and spatial parameters for steering the future growth and development of the Garden Community and for use in the determination of potential planning applications.

It would leave the Councils with only the higher-level policies within the Section 1 Local Plan against which to make decisions on applications and would seriously undermine the ability of the Councils to either bring forward the Garden Community at all (which will impact on achievement of Tendring and Colchester's Local Plan growth requirements and other ambitions associated with the development) or to otherwise reduce the degree of control the Councils could exercise, in the event that planning applications still came forward. There would also be implications for the Councils in being able to demonstrate both that planning policies are up to date and that an ongoing 5-year supply of deliverable housing land can be identified against Local Plan targets - which could leave both authorities more vulnerable to speculative planning applications, the presumption in favour of development and planning by appeal.

There is a risk therefore that should the DPD not be adopted or adoption is delayed, forthcoming applications could not be considered and decisions not taken in an appropriate timescale and the ongoing ability for the Councils to manage growth within the TCBGC and wider area will be compromised. Delay in the determination of applications would pose a risk to the timetable for the overall Garden Community project, the delivery of the first phase of homes and associated

infrastructure, and the ongoing support that the project has received from central government, including through grant funding.

Both TDC and CCC are in the process of reviewing and updating their Local Plans and are having to respond to the new and ambitious mandatory housebuilding targets being imposed by the Government following changes to the National Planning Policy Framework (NPPF). Local Planning Authorities (LPAs) are required to have an up-to-date Local Plan or face government sanctions/intervention or risk planning by appeal. A decision not to adopt the DPD would have implications for the Local Plan process at both TDC and CCC – and other locations that might or might not need to be considered to make up for any potential development shortfall that results.

## **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.

Under the Committee's adopted terms of reference, its functions specifically include overseeing the preparation of the joint TCBGC DPD and ensuring it:

- a. is in accordance with the Local Development Schemes;
- b. includes policies designed to secure that the development and the use of land in the garden community area contribute to the mitigation of, and adaption, to climate change;
- c. meets the "tests of soundness" as set out in legislation, national and planning policy and advice contained within guidance issued by the Secretary of State;
- d. has regard to the adopted Section 1 of CBC & TDC's Local Plan;
- e. has regard to the resources likely to be available for implementing the proposals in the document;
- f. other such matters the Secretary of State prescribes; and
- g. complies with the Council's Statement of Community Involvement

Planning legislation and the National Planning Policy Framework (NPPF) (both the 2021 version applicable to this DPD and the new 2024 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.

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 proceed with the adoption of the DPD to ensure it meets the requirements of national planning policy so that, together with Section 1, it can be relied upon by the Councils acting as the Local Planning Authority. For the purposes of the Garden Community allocation boundary the DPD it will replace those policies within the current Section 2 Local Plans which will become increasingly out of date.

The Planning and Compulsory Purchase Act 2004 and the Town and Country Planning (Local Planning) (England) Regulations 2012 place certain provisions on the Local Planning Authority in complying with the plan making process, which are also tested at Examination. These include:

- 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;
- provision for regulations relating to the preparation, publication and representations relating to a local plan and the independent examination;
- requirement for 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;
- requirement for 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.
- provides that the Inspectors 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 job of the Planning Inspector is to test that the DPD 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 DPD requires modifications to ensure that it is sound. These modifications were published for consultation in their own right, alongside an updated Sustainability Appraisal and an update to the Habitat Regulations Assessment (HRA) which considers the impact of the modifications on international wildlife sites.

With the incorporation of the final Main Modifications, the DPD has been found sound, and the Councils can proceed to adoption.

On adoption, the DPD will form part of the statutory development plan for Tendring and Colchester alongside the Section 1 and Section 2 Local Plans and will carry full weight in the determination of planning applications relating to the Garden Community – with an expectation that planning applications are determined in accordance with the development plan unless other material considerations indicate otherwise as per Section 38(6) of the Planning Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990.

## 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 ability to deliver the Garden Community will however have implications for the wider area, including the potential requirement to identify land for further development through current and future Local Plan reviews.

**Consultation/Public Engagement:** The Councils have been through a comprehensive consultation programme for the DPD as set out in the Councils Statement of Community Involvements (SCI) and as required under the Planning and Compulsory Purchase Act 2004 (as amended).

All relevant documents are available on the TCBGC examination website hosted by the Councils. The Inspectors Report and Main Modifications were published on the website following receipt of the Report. The DPD is likely to generate significant publicity for the Councils as it has done previously.

**Equality, Diversity and Human Rights implications:** An Equality Impact Assessment has been prepared for the DPD, and is available to view by clicking on this link: [Equality Impact Assessment](#)

In his report the Inspector has confirmed that he has had due regard to the aims expressed in S149 of the Equality Act 2010. Several matters were considered during the examination including health and wellbeing, social and community infrastructure, and provision for specialist housing for older and disabled people and also for those who need accessible housing, along with ensuring there is adequate provision to help meet the accommodation needs of Gypsies and Travellers.

The Inspector's report confirms that the disadvantages those with a protected characteristic suffer would be minimised and their needs met in so far as they are different to those without a relevant protected characteristic. It is concluded that there is no compelling evidence that the DPD as a whole would bear disproportionately or negatively on them, or others in this category.

**Financial implications:** The production and examination of the DPD has been undertaken within an allocated budget to which all of the partner authorities have contributed.

**Health, Wellbeing and Community Safety Implications:** Adoption of the DPD will enable the Councils to address the health, wellbeing and community safety implications of creating a sustainable Garden Community through the application of its policies in the determination of future planning applications.

**Health and Safety Implications:** No direct implications.

**Risk Management Implications:** Local Plan policies are intended to ensure their effectiveness is intended to reduce the risk of inappropriate development. It will provide consistent advice to landowners, developers, officers, Councillors and members of the public.

**Environmental and Sustainability Implications:** The TDC and CCC have declared Climate Emergencies and are both committed to alignment to the Government target for scope 1 and 2 emissions by 2050. The purpose of the planning system is to contribute to the achievement of sustainable development as defined in the National Planning Policy Framework. Achieving sustainable development means that the planning system has three overarching objectives, economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways through the plan making process. Accordingly, the preparation of the DPD has taken these objectives as its starting point.

This report has taken into account the Climate Emergency and the sustainable development objectives set out in the NPPF. It is considered that the report demonstrates that adoption of the DPD can contribute to achieving sustainable development.

**Devolution and Local Government Reorganisation:** Emerging proposals around Devolution and Local Government Reorganisation do not affect the Council's existing duties to review and update Local Plans, other Development Plan Documents (DPDs) such as this and to continue making planning decisions on applications that are submitted. Government officials have advised Councils to continue existing work on plan-making to ensure coverage of up-to-date Local Plans and other DPDs across the country remains.

Whilst the Government is expected to release more details in the coming year of how plan-making is expected to work across newly formed combined strategic authorities and constituent unitary authorities in the future, the work carried out on District's current and emerging Local Plans and associated DPDs will be valuable in informing and feeding into new-style Strategic and Local Plans in the future. Local Plans and DPDs in place at the time of creating (vesting) of the new unitary authority will carry forward to form the statutory development plan for the area with future reviews and consolidation of plans and future planning decisions falling to the new unitary authority in due course.

Councils are however being encouraged to align timetables and evidence-base production with neighbouring authorities as best as they can in the run up to future reorganisation. The approach

that Tendring District Council, Colchester City Council and Essex County Council have already taken to date in working in partnership on the Garden Community, the setting up of the Joint Committee and the production of the DPD is already recognised by government as exemplary practice. This puts the partner authorities in a positive position moving forward towards new structures of local government.

## **PART 3 – SUPPORTING INFORMATION**

### **BACKGROUND**

The Local Plans for Colchester City and Tendring District are in two parts. The Section 1 Local Plan sets out an overarching strategy for future growth across Braintree, Colchester and Tendring – the ‘North Essex Authorities’ (‘NEAs’). It also includes policies setting the overall housing and employment requirements for North Essex up to 2033. The principle of the Garden Community has already been established through the Strategic Policies contained within the Section 1 Local Plan being SP6, SP8 and SP9. The Section 1 Local Plan was independently examined, found sound and adopted by CCC and TDC in February 2021 and January 2021 respectively.

The Colchester and Tendring Section 2 Local Plans, adopted July 2022 and January 2022 respectively, contain all other City and District wide site allocations and policies including a comprehensive policy framework for Development Management. Requirements from relevant development management policies from the Section 2 Local Plans have been included in the DPD, which for the purposes of all land within the Garden Community Site Allocation Boundary replaces all policies within the Section 2 Local Plans.

Before a Local Plan (in this case the DPD) 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) The policies and proposals in the plan comply with the ‘tests of soundness’ contained within the National Planning Policy Framework (NPPF).

Inspector Graham Wyatt BA (Hons) MRTPI was confirmed as the appointed Inspector following submission of the DPD for independent examination in September 2023. Examination Hearing sessions were held in May 2024, following which the Inspector recommended a schedule of Modifications which were considered necessary for the soundness of the Plan.

These recommended Modifications were subject to consultation for a period of 6 weeks during September and October 2024, as required by and in accordance with, the Planning and Compulsory Purchase Act 2004 and the Town and Country Planning (Local Planning) (England) Regulations 2012. An accompanying update to the Sustainability Appraisal (August 2024) and Habitats Regulations Assessment (July 2024) were also subject to consultation over the same period.



Having considered the comments received on the Modifications, the Inspector has issued his report to the Councils which contains the final conclusions on the legal compliance and soundness of the DPD. The Inspector has concluded that, subject to the incorporation of the Inspector's Main Modifications (Appendix 2), the DPD will meet the required tests which enable it to proceed to formal adoption. The Inspector's report is attached in full as Appendix 1 to this report.

The Inspector's Main Modifications are unchanged from those published for consultation with the exception of updated numbering/ordering of the said modifications, and the removal of those modifications which related to the DPD Policies Map.

When submitting a plan for examination, the Councils were required to provide a submission Policies Map that would result from the proposals in the submitted DPD. The Inspector has confirmed that the Policies Map is not defined in statute as a development plan document and therefore he does not have the power to recommend main modifications to it. However, it has been acknowledged that there are instances where the geographic illustration of policies on the submission Policies Map require adjustment, and where changes are needed to correct typographical errors and ensure that the relevant policies are effective. They include amending the area identified as a sports and leisure park to cover existing woodland to the south of the A133 and clarifying that the 30m woodland "buffer" is for information purposes only. These changes were consulted on under the consultation on the recommended modifications as MM14-MM17.

Whilst these recommended modifications have not been taken forward into the Inspector's Main Modifications, the Inspector has confirmed that when the Plan is adopted, to comply with legislation and give effect to the Plan's policies, the Councils will need to update the Policies Map to include all the changes identified in accordance with the previously recommended modifications. An updated version of the Policies Map can be found at Appendix 4 to this report and is embedded in the DPD.

A revised Introduction to the DPD has been drafted to provide any consequential updates and a clean copy of the DPD, is attached to this report as Appendix 3. This incorporates all of the Inspector's Main Modifications as attached as Appendix 2.

The importance of ensuring the Councils have an up-to-date adopted DPD for the Garden Community cannot be understated. The existing Local Plans will become increasingly out of date and do not provide the site specific, evidenced policy framework to secure an exemplary and comprehensively planned Garden Community underpinned by Garden City Principles and supported by the right infrastructure delivered at the right time. The adoption of the DPD will enhance the Councils policy position building on the Strategic Policies within the Section 1 Plan. On its own the Section 1 Plan does not provide the level of information and specific policy requirements detailed within the DPD. Adoption of the DPD, amongst other things, secures the following:

- **Appropriate location of built development and land uses**

Policy GC1 in the DPD defines what is appropriate, and where, across the site and defines specific protections. Importantly this defines the locations of the Wivenhoe and Elmstead Strategic Green Gaps, Salary Brook Country Park, key employment uses, and what is considered appropriate development to be located south of the A133. The Section 1 Plan does not include this level of definition, and developers could bring forward alternative proposals in any part of the original 'area of search'.

- **Protection and enhancement of green-blue infrastructure and biodiversity**

Policy GC2 has high policy expectations for the natural environment, requiring nature to be placed at the heart of the Garden Community, with specific and stringent requirements for ecological surveys, mitigation and strategies.

- **Exemplary requirements for design quality and amenity which maximises health and wellbeing.**

Alongside and enhancing the requirements of the Section 1 Plan, Policy GC3 requires a structure of Masterplans and Design Codes to ensure the Garden Community will be a unique place that takes a positive and innovative approach to the architecture, urban design, landmarks and public realm provision.

- **Requirements for a range of housing types & tenures**

Policy GC4 requires a wide range of housing tenures and types and standards, enhancing the requirements of the Section 1 Plan.

- **Safeguarding appropriate employment provision**

Policy GC5 protects defined employment areas in terms of acceptable uses, enhancing the requirements of the Section 1 Plan and fostering the right conditions for economic activity and employment.

- **Establishing strong and sustainable stewardship**

Policy GC6 establishes fundamental principles of stewardship and the requirement and requires arrangements for the sustainable long-term governance and stewardship of the Garden Community along with the requirement for supporting developer contributions.

- **Ensuring the provision of appropriate health services**

Policy GC6 provides additional policy protections to ensure that appropriate health services and facilities come forward, including the need for developers to prepare a 'Health Strategy' and 'Health Impact Assessment' and the requirement for a Health & Wellbeing Hub to be provided.

- **Transport infrastructure**

Policy GC7 provides a clearer policy basis to ensure that additional investment is secured to implement the Rapid Transit System and fund the full Link Rd. This updates the Section 1 Plan position, so it is clear to developers.

- **Providing for the highest standards of sustainable infrastructure.**

Policy GC8 provides the basis for securing the very highest standards for creating a Garden Community fit for the future. This policy is at the very forefront of ensuring development proposals take every opportunity to address the climate emergency.

- **Strengthening infrastructure delivery.**

Policy GC9 sets out that developers will be required to make direct provision or contribute towards the delivery of all infrastructure as is defined in the 'Infrastructure Delivery, Phasing & Funding Plan'. There is no corresponding reference to an infrastructure schedule in the Section 1 Plan policy.

The current National Planning Policy Framework under paragraph 11 d) states that “where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.”

In these circumstances the ability to control and influence matters which are rightly covered in the DPD would be significantly reduced, with more reliance being placed on national policies contained within the NPPF. The DPD is based on significant evidence reflecting circumstances and issues relevant to Colchester and Tendring, which add valuable guidance and detailed requirements which would apply to decision making. An up-to-date and adopted DPD will enable decisions to be considered against the most relevant Local Policy framework, with an expectation that decisions would be required to comply with the policies in the Development Plan as a whole. Whilst seeking to support and achieve sustainable development, the ability for the Councils to shape and influence planning decisions is significantly enhanced with the adoption of the DPD.

## **Next Steps**

Now that the Councils have received a final report on the legal compliance and soundness of the DPD, Officers recommend that the Joint Committee endorse the Inspector's final Main Modifications,

and that the modified version of the DPD (updated clean version attached as Appendix 3 to this report) be forwarded to the Full Councils of TDC and CCC, and recommended for formal adoption.

Key milestones in the progression of the TCBGC project post adoption of the DPD continues to align with Planning legislation and established good practice. The table contained within Appendix 5 of this report outlines the project programme timeframe, details the stage at which key information will be received and the corresponding determination milestones. Adoption of the DPD will be fundamental in providing the structure in which to implement the projected programme and to secure the relevant information at key stages.

**APPENDICES**

- Appendix 1 – Inspector’s Report
- Appendix 2 – Inspector’s Schedule of Main Modifications
- Appendix 3 – Development Plan Document (DPD) (as modified)
- Appendix 4 – Policies Map (as modified)
- Appendix 5 – TCBGC Project Programme

**BACKGROUND PAPERS**

- Sustainability Appraisal – Modifications Addendum (August 2024)
- Habitats Regulations Assessment – Modifications Update (July 2024)