

Gladman Developments Ltd

Colchester Borough Council - Section 2 Local Plan Examination

Matter 1 Hearing Statement



April 2021

Main Matter 1 – Legal Requirements and Overarching Issues relating solely to the policies within CLP Section 2

Does CLP Section 2 meet all other legal requirements, specifically:

- **Does the content and timescale for preparation of CLP Section 2 accord with the latest version of the Local Development Scheme?**

1.1 Colchester Borough Council's (CBC) latest Local Development Scheme (LDS) 2019-2022 was published in February 2019 (CBC 4.2). At the time of publication, this document anticipated that the CLP Section 2 would be examined in Autumn 2020 and Adopted in Winter 2020 whilst running alongside the CLP Section 1. However, examination of the CLP Section 2 has been significantly delayed allowing for the Adoption of the CLP Section 1 in January (Tendring DC) and February (Braintree DC and Colchester BC) 2021 respectively following significant delays encountered by the North Essex Authorities on the progress of the CLP Section 1.

1.2 The Hearing sessions for the CLP Section 2 are scheduled to run between 20th April 2021 and 30th April 2021. At the time of writing, CBC have not published an updated LDS to reflect the updated CLP Section 2 timetable.

- **Has CLP Section 2 consultation complied with the Statement of Community Involvement and public consultation requirements in the Town and Country Planning (Local Plan) (England) Regulations 2012?**

1.3 CBC's latest Statement of Community Involvement (SCI) was adopted in July 2018. Gladman is satisfied that consultation on the CLP Section 2 has been undertaken in accordance with the Council's SCI and the statutory requirements. The July 2020 update to the SCI provided information on adaptations made to consultation arrangements to address the ongoing COVID-19 issues.

1.4 The Inspector's Report for the CLP Section 1 published on 10th December 2020 acknowledges at paragraph 26 that: *"consultation on the Plan and the MMs was carried out in compliance with the North Essex Authorities (NEAs) Statement of Community Involvement"*¹.

1.5 Furthermore, at paragraph 28 of the Inspector's Report, the Inspector concluded: *"I find no evidence that the NEAs failed to consult on the Plan in accordance with their Statements of Community Involvement, as required by section 19(3) of the 2004 Act."*² Gladman consider that the Inspector's conclusion must also be applicable to the CLP Section 2 as it was undertaken at the same time.

¹ IED001 – Paragraph 26 of the Inspector's Report on Section 1 Plan (10th December 2020).

² IED001 – Paragraph 28 of the Inspector's Report on Section 1 Plan (10th December 2020).

- **Has CLP Section 2 been subject to a Sustainability Appraisal (SA) and have the requirements for Strategic Environmental Assessment been met? Is it clear how the SA influenced the final plan and dealt with mitigation measures?**

- 1.6 The National Planning Policy Framework 2012 (NPPF2012), against which the CLP Section 2 is being examined, is clear in the tests of soundness contained in Paragraph 182 that in order to be justified, the Plan should be the most appropriate strategy when considered against reasonable alternatives.
- 1.7 The Sustainability Appraisal (SA) for the CLP Section 2 was undertaken in 2017 and provides an assessment of the policies, allocations and reasonable alternatives and explanation of the chosen approach. The SA for the CLP Section 2 assesses policies, proposals and alternatives against a series of core sustainability objectives consistent with those used in the SA, and the required additional SA work for the CLP Section 1.
- 1.8 Policy SG1 sets out its preferred approach for the borough's spatial strategy. The approach to the distribution of housing in the borough is to locate development in the most accessible locations against the settlement hierarchy set out in this policy. Gladman consider that the SA for Colchester only explores a settlement hierarchy approach to the spatial distribution of housing and there is no evidence to suggest that this is the most sustainable approach to development in Colchester.
- 1.9 In assessing the alternatives for the distribution of housing, the SA makes broad assumptions about the sustainability of smaller and more rural settlements and therefore completely restricts development in those locations on the basis that they are unsustainable, without considering the possibility that development could improve the sustainability of those locations. Gladman has land opportunities at 'Land off Bakers Lane, Braiswick' and 'Land off Colchester Road, West Bergholt' where it can be considered that they have been unfairly assessed. Furthermore, if the West Bergholt site had been assessed, as is included on the Site Location Plan submitted by Gladman, it is expected that the SA would have assessed it more favourably, as the key negative impacts would fall away.
- 1.10 It appears that CBC has attempted to diminish the possibility of development in smaller villages in the countryside by setting these out under one alternative option that would only deliver development in these locations. Other alternatives such as only including development which could come forward in full, in the plan period is also flawed due to the fact it is an artificial test, whereby there is no justification for ruling a site out for housing development just because its delivery timescales extends beyond the designated plan period.
- 1.11 Gladman conclude that the SA requires amendments before it could be considered robust.

- **Have the requirements for appropriate assessment under the Habitats Regulations been met? Have the results of the Habitats Regulations Assessment been carried forward in the CLP Section 2?**

1.12 The Habitats Regulations Assessment (HRA) for the CLP Section 2 is robust. CBC commissioned Land Use Consultants (LUC) to prepare the HRA for the CLP Section 2 in October 2016. CBC also commissioned LUC to prepare an updated report (dated March 2021) which is now complete and included as part of CBC's CLP Section 2 evidence base. As noted from *Topic Paper 1 – Consequential Changes and Implications for Section 2*, the updated HRA report has taken into account: recent caselaw, updates to best practice approach to HRA and the content of the CLP Section 1 HRA and the Inspector's findings reached as part of that Examination.

1.13 *Topic Paper 1 – Consequential Changes and Implications for Section 2* notes that Natural England are in full agreement with the key conclusions and recommendations arising from the Appropriate Assessment and the safeguards and mitigation measures identified in the AA to ensure that there will be no likelihood of Impact on European Sites as a consequence of the CLP Section 2, either alone or in combination with other plans or projects. CBC will request appropriate financial contributions, in line with the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) from any development proposals which will have an impact on designated European sites.

1.14 Gladman is satisfied that the requirements for appropriate assessment under the Habitats Regulations have been met and have been carried forward into the CLP Section 2.

- **Has the preparation of CLP Section 2 complied with the Town and Country Planning (Local Plan) (England) Regulations 2012?**

1.15 Both the CLP Section 1 and the CLP Section 2 have been prepared, consulted upon, and submitted for examination, with a shared evidence base, as two parts of the same document. The CLP Section 1 Inspector's Report, under the sub-heading 'Other legal compliance matters' on page 9, addresses all matters of compliance relating to the LDS, SCI, Strategic Priorities, and superseded policies. The Inspector notes that all matters have been carried out in accordance with the relevant regulations and legal requirements. This is found at paragraph 29 of the Inspector's Report whereby he concludes: "*The Plan complies with all other relevant legal requirements, including those in the 2004 Act and the 2012 Regulations.*"³

³ Inspector's Report on the North Essex Authorities Section 1 Plan (10th December 2020), paragraph 29

- **Are there any cross-boundary issues including Gypsies, Travellers and Travelling Showpeople within CLP Section 2 that required the Council to engage effectively with neighbouring authorities and other relevant organisations which have not already been addressed in CLP Section 1?**

1.16 Gladman have no specific comments in response to this question.

- **Does the policies map correctly illustrate geographically the application of policies in the CLP Section 2?**

1.17 The submission version of the Policies Maps (ref: SDCBC/001/2/2) requires modifications following the conclusions reached by the examining Inspector on the three proposed Garden Communities following the Hearing sessions on the CLP Section 1. The Inspector concluded that the West of Braintree and Colchester / Braintree Borders Garden Communities were not deliverable or viable and they have therefore been deleted from CLP Section 1. Subsequently, Policy SP9 will require to be deleted from CLP Section 2 and deletion from the submission version of the Policies Map. Policy SG3, in relation to the Tendring / Colchester Borders Garden Community, the Inspector has requested a modification for CBC to include a further 25 hectares of employment land to be allocated within the proposed Garden Community post 2033. There are also modifications required in relation to housing land allocation sites where there has been a change of circumstance since the CLP Section 2 was submitted in October 2017 - these changes are set out by CBC in *Topic Paper 2 – Housing Matters*.

1.18 In relation to employment land allocation requirements, the Inspector's Post-Hearing letter (dated 8th June 2018) proposed modifications to provide a range of 22-30 hectares of employment land required to replace the 22-55.8 hectares range which is currently included in Policy SP4 of the CLP Section 2. *Topic 1 – Consequential Changes and Implications for Section 2* maintains that an overall employment land allocation requirement for the borough of 35.3 hectares is considered to be acceptable as it provides greater flexibility given the current uncertain economic climate. Within *Topic Paper 3 – Economic Growth*, CBC acknowledge that an error has occurred by not displaying 3 hectares of employment land at Andersons timber yard at Marks Tey. This allocation was included in the 2010 Proposals Map and CBC will now carry this forward into the CLP Section 2 Policies Maps.

1.19 It is noted from the CBC Local Plan Draft Modifications to Section 2 document that corrections and consequential changes to the various policies maps will follow alongside the final list of modifications to the CLP Section 2.

Consistent with National Policy

Does CLP Section 2 accord with national policy for plan making in the NPPF, specifically:

- **Does CLP Section 2 contribute to the achievement of the three dimensions of sustainable development – economic, social, and environmental?**

1.20 Paragraph 7 of the NPPF 2012 sets out the three dimensions to sustainable development; social; economic and environmental. Paragraphs 151 and 152 of the NPPF 2012 are clear in stating:

“Local Plans must be prepared with the objective of contributing to the achievement of sustainable development. To this end, they should be consistent with the principles and policies set out in this Framework, including the presumption in favour of sustainable development.”⁴

Local planning authorities should seek opportunities to achieve each of the economic, social and environmental dimensions of sustainable development, and net gains across all three. Significant adverse impacts on any of these dimensions should be avoided and, wherever possible, alternative options which reduce or eliminate such impacts should be pursued. Where adverse impacts are unavoidable, measures to mitigate the impacts should be considered. Where adequate mitigation measures are not impossible, compensatory measures may be appropriate.”⁵

- 1.21 CLP Section 2 policies SG3 (Economic Growth) and SG4 (Local Economic Areas) set out a clear economic vision and strategy for the borough which positively and proactively encourages sustainable economic growth. It is forecasted that the Plan will create over 20,000 new jobs across the borough by 2032.
- 1.22 The CLP Section 2 identifies opportunities for new development proposals, including the Tendring / Colchester Borders Garden Community, the ability to maximise benefits arising from investment in community infrastructure, and the opportunities enhanced accessibility the potential rapid transport scheme will bring to an already well-connected borough to support sustainable transport modes. The CLP Section 2 directs development to meet the borough’s growth potential, mainly designated at the urban area of Colchester and the designated Sustainable Settlements.
- 1.23 The CLP Section 2 at paragraph 1.25 clearly recognises the economic growth potential of the area. Gladman also recognises the regional infrastructure drivers which are likely to sustain significant economic growth over the plan period and beyond. The principle of sustainable development is borough wide with the provision of better transport, better housing and better local facilities and services, which will in turn

⁴ National Planning Policy Framework 2012, paragraph 151.

⁵ National Planning Policy Framework 2012, paragraph 152.

result in better health of local communities, but also a commitment for developing a strong and varied sense of place.

1.24 The CLP Section 2 provides the framework to meet and exceed the borough's housing requirement. CBC remains committed to developing further a strong and varied sense of place in the borough and to ensure a high quality of design which is also environmentally sustainable way so that future development is well integrated into its context. In terms of employment, CBC is committed to providing new jobs (approx. 20,000 by 2032) across the borough.

- **Has it been positively prepared and is it 'aspirational but realistic'? (paragraph 154 of the NPPF)**

1.25 Paragraph 182 of the NPPF states a local planning authority should submit a plan for examination which it considers is "sound" – namely that it is:

- Positively prepared – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;
- Justified – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;
- Effective – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and
- Consistent with national policy – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework.

1.26 As outlined within our representations to the Regulation 19 stage of the CLP Section 2, Gladman has concerns regarding policies SG2, SG8, ENV1, ENV2, SS13, OV12, DM15 and DM16. Gladman do not seek to repeat these comments and direct the examining Inspectors to our submitted representations to the Regulation 19 consultation (August 2017).

- **Is CLP Section 2 consistent with the NPPF in all other respects? Or if not, what is the justification for any inconsistency?**

1.27 Gladman have no specific comments in response to this question.

- **Are there any policies within CLP Section 2 which are Strategic Policies, and should they be identified as such?**

1.28 Gladman anticipate that CBC will make it clear to the examining Inspectors within their Matter 1 Hearing Statement response, the policies within the CLP Section 2 which they consider to be strategic policies.

- **Do the policies in CLP Section 2 provide a clear indication of how a decision maker should react to a development proposal?**

1.29 Paragraph 154 of the NPPF2012 states: *“Local Plans should set out the opportunities for development and clear policies on what will or will not be permitted and where. Only policies that provide a clear indication of how a decision maker should react to a development proposal should be included in the plan.”*⁶

1.30 Gladman is satisfied that the policies within the CLP Section 2 do provide a clear indication of how decision-makers should react to development proposals. The policies are clear in explaining how a decision maker should consider proposals where they meet a set prescribed criterion or do not cause a significant impact.

⁶ National Planning Policy Framework 2012, paragraph 154