



Colchester Local Plan Section 2

Examination Hearing Statement

Main Matter 2 - Sustainable Growth Policies (Policies SG1 to SG8)

Prepared by Strutt & Parker on behalf of Bloor Homes

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1. Introduction and Background

- 1.1 Strutt & Parker made representations on the Colchester Local Plan Publication (Regulation 19) Draft, including on matters relevant to the Local Plan Section 2 (LPS2) on behalf of Bloor Homes.
- 1.2 These representations ('the Regulation 19 representations') (Comment ID 7285, 7286, 7287 and 7288) were duly made.
- 1.3 In the case of LPS2, it is considered relevant that considerable time has elapsed since consultation on the Regulation 19 draft which took place between June and August 2017.
- 1.4 We consider that as submitted the LPS2 is unsound, but that defects can be cured through main modifications.
- 1.5 This hearing statement concerns Main Matter 2 (Sustainable Growth Policies) of the Local Plan Examination and the overarching question posed: *Are the Sustainable Growth Policies justified by appropriate available evidence, having regard to national guidance, and local context, including Section 1 of the CLP?* Specifically, this hearing statement addresses the following questions of the Inspector's Main Matters, Issues and Questions:
- Is Colchester's spatial strategy and the distribution of development as set out in Policy SG1 supported by robust and up to date evidence and otherwise soundly based?*
- And:
- Does CLP Section 2 Policy SG2 make adequate provision to meet Colchester's housing requirement as set out in CLP Section 1 (14720 new homes) and its timescale for delivery within the plan period 2017 - 2033?*
- 1.6 A summary of the key numbers discussed within this hearing statement is provided as **Appendix A**.
- 1.7 As requested, this Hearing Statement seeks to avoid repeating points already made in the Regulation 19 representations.
- 1.8 The eLP is being examined in relation to the NPPF 2012, as per the NPPF 2019 transitional arrangements. Consequently, unless stated otherwise, reference to the NPPF in this statement is to the NPPF 2012. Likewise, reference to PPG is to that which accompanied the NPPF 2012 unless otherwise stated.

2. Response to Main Matter 2

Are the Sustainable Growth Policies justified by appropriate available evidence, having regard to national guidance, and local context, including Section 1 of the CLP?

Is Colchester's spatial strategy and the distribution of development as set out in Policy SG1 supported by robust and up to date evidence and otherwise soundly based?

- 2.1 In respect of Tiptree, the settlement is clearly a sustainable location to which to direct a significant proportion of the Borough's growth.
- 2.2 As discussed within our Regulation 19 representations, Tiptree is an established settlement and community, which benefits from a range of facilities and services.
- 2.3 Furthermore, it is subject to few constraints that suggest its growth could not be sustainably accommodated.
- 2.4 Within the current Development Plan, Tiptree is identified as a 'District Settlement' – second tier of the settlement hierarchy, below only Colchester Town and Stanway. It is not considered there has been any material change in circumstances since that would justify placing Tiptree in a different tier now.
- 2.5 We do nevertheless have concerns that the LPS2 as submitted will not be effective in facilitating sufficient growth to this settlement. These concerns are set out in our response to Main Matter 9.

146 words

Does CLP Section 2 Policy SG2 make adequate provision to meet Colchester's housing requirement as set out in CLP Section 1 (14720 new homes) and its timescale for delivery within the plan period 2017 - 2033?

Requirement

- 2.6 LPS1 Policy SP4 requires provision of a minimum of 18,400 dwellings in Colchester between 2013 and 2033.
- 2.7 Between 2013 and 2020, a total of 6,300 net additional dwellings were delivered in Colchester¹.
- 2.8 As such, in order to meet the LPS1 minimum housing requirement, at least 12,100 dwellings will need to be delivered 2020-2033.
- 2.9 We note that at paragraph 3.4 of the Council's Local Plan Examination Topic Paper 2 (TP2), it states that the Council has prepared a plan to seek to meet its housing requirement between 2017 and 2033; that this requirement for 2017-2033 is 14,720 dwellings (16 x 920); and that 3,337 dwellings have already been delivered, resulting in a residual minimum requirement up to 2033 of 11,383 dwellings.
- 2.10 We have three observations to make regarding the above.
- 2.11 Firstly, Policy SP4 of the LPS1 makes clear that the minimum housing requirement to be achieved is 920 dpa for the period 2013-2033. As such, any shortfall / oversupply since 2013 needs to be accounted for. Between 2013-2017, 3,292 net additional dwellings were delivered in the Borough. This represents a shortfall totalling 388 dwellings that would need to be added to any requirement calculation running from 2017. The minimum housing requirement **2017-2033** is therefore **15,108 dwellings** (16 x 920; plus 388).
- 2.12 Secondly, reference to 3,337 dwellings already having been delivered appears to be based on total completions 2017-2020 as reported in paragraph 2.2 of TP2.
- 2.13 This total of 3,337 dwellings includes a reported 1,124 completions for 2019/20.
- 2.14 At paragraph 1.5 of TP2, it is acknowledged that data for 2019/20 was incomplete at the time figures were compiled.

¹ MHCLG Live Table 122

- 2.15 Both the Housing Delivery Test 2020 Measurements and MHCLG Live Table 122 report provision of only 785 net additional dwellings in Colchester in 2019/20.
- 2.16 In addition, MHCLG Live Table 122 reports 10 *more* additional dwellings for the year 2018/19 than reported in TP2.
- 2.17 Correcting the 2018/19 and 2019/20 reported in the table at paragraph 2.2 of TP2 to account for this anomaly results in a total of 3,008 completions for Colchester for 2017-2020.
- 2.18 The requirement 2020-2033 is 15,108 less these 3,008. This equates to 12,100.
- 2.19 Thirdly, the approach to consider the residual housing requirement set out in TP2 has, in our view, somewhat overcomplicated the matter. Much simpler, the key figures are:
1. 18,400 – Colchester’s total minimum housing requirement for 2013-2033 as per Policy SP4 of LPS1;
 2. 6,300 – total net additional dwellings provided in Colchester 2013-2020²
 3. 12,100 – number of net additional dwellings required 2020-2033 in order to meet the minimum requirement.
- 2.20 In short, the residual requirement 2020-2033 is not 11,383 dwellings, as TP2 suggests, but **12,110 dwellings**.
- 2.21 Separately, it is pertinent to note that the Colchester local housing need as per current national policy is a minimum of 1,061 dpa. This equates to a minimum requirement of 13,793 dwellings 2020-2033.
- 2.22 It is recognised that national policy³ suggest the LPS2 be examined in relation to the NPPF 2012, rather than current national policy. However, case law confirms that decision-makers should not blindly follow policies without considering the implications of this⁴.
- 2.23 In this instance it would, in our view, be irrational to completely disregard current local housing need. Particularly as a) to do so could result in substantial social and economic harm; and b) it has been some three years since the introduction of the current approach

² Ibid

³ Paragraph 214 of NPPF 2019

⁴ See for example *West Berkshire v Secretary of State* [2016] EWCA Civ 441 [2016], in which *British Oxygen* [1971] AC 610 was cited

to calculating local housing need was introduced through the NPPF 2018. The Council has had considerable time to address the implications of this.

- 2.24 This does not mean the LPS2 needs to seek to achieve a housing target based on current national policy and local housing need, but the LPS2 should be mindful of this need.

Supply

- 2.25 TP2 Appendix 2⁵ suggests that between 2019 and 2034, 15,186 dwellings will be delivered in Colchester. This includes two years for which completions are not directly relevant to meeting the LPS1 target: 2019/20 and 2033/34. Once projected completions are discounted from these two years, it can be discerned that the LPS2 is projected to result in **13,557 net additional dwellings** in the period 2020-2033.
- 2.26 Against the residual requirement of 12,100 dwellings, the Council's housing trajectory in TP2 Appendix 2 trajectory ostensibly provides a headroom of **1,457 dwellings** above the minimum requirement for the plan period. This headroom equates to **12%** of the minimum requirement.
- 2.27 It is entirely appropriate, indeed necessary, for Local Plans to provide headroom above the minimum requirement. Firstly, because it is a *minimum* requirement. Secondly, the NPPF requires Local Plans to not merely seek to meet minimum housing requirements, but for their strategies for doing so to be imbued with sufficient flexibility to be capable of responding to rapid change.
- 2.28 It is notable that the Inspector examining LPS1 concluded Policy SP3 as submitted (concerning housing requirement) was unsound, and modifications were required to make clear additional provision will be made to ensure flexibility, choice and competition⁶. It is therefore surprising that LPS2 has not been subject to modifications to seek to achieve this, particularly given that one of the two Garden Communities the submitted LPS1 relied upon to meet development needs has been deleted.
- 2.29 In terms of the scale of headroom above the minimum requirement that is appropriate / necessary, the appropriate level depends on the particular circumstances.

⁵ NB There are two Appendix 2s in TP2. The first is an appendix to Appendix 1 of TP2 (May 2020 Housing Land Supply Annual Position Statement). The second (15 Year Housing Trajectory - October 2020) begins on page 56 of TP2, and for the avoidance of doubt, references to TP2 Appendix 2 in this document are to this second Appendix 2.

⁶ Paragraph 60 of Inspector's Report on examination of LPS1, 10 December 2020.

- 2.30 In the case of the Guildford Local Plan, a headroom of 3,984 dwellings / 37% was deemed appropriate, and again in the context of this necessitating further Green Belt release beyond that required to meet the minimum requirement. In this instance, the Examination Inspector noted that such a headroom was justified, notwithstanding the additional loss of Green Belt this would engender, as it would help ensure a robust strategy for meeting needs in the event that there is slippage in the delivery of housing from the allocated or committed sites; as well as helping provide for the anticipated level of unmet need from neighbouring Woking, with the Inspector noting that there would be a continuing level of undersupply over the period of Woking's newly reviewed plan.
- 2.31 In respect of this latter point and its relevance to the LPS2, the recently adopted LPS1 provides a housing target for Tendring of 550 dpa, whereas the local housing need in this neighbouring District (as per the standard method) is currently 880 dpa. Tendring District's strategic policies seek to deliver 63% of its local housing need. This is a greater percentage shortfall than the one in Woking (where adopted policies would address 71% of needs). There are evident parallels between Guildford / Woking and Colchester / Tendring in relation to this issue.
- 2.32 This scale of headroom above the minimum housing requirement deemed necessary within a Local Plan is by no means confined to those in which there was an unmet need in a neighbouring area.
- 2.33 In the Inspector's Report on the South Oxfordshire Local Plan for example, it was concluded a headroom of 27% (6,506 dwellings in absolute terms) was appropriate, with the Inspector determining the reduction called for by some through the examination would make the plan "*much less resilient in the face of potential delays to one or more of the strategic allocations*"⁷. Notably, and as with the Guildford Local Plan, this was in the context of further Green Belt being required to be released in South Oxfordshire to accommodate this headroom – a constraint that is not present in the case of Colchester.
- 2.34 Similarly, in the case of the Mansfield Local Plan, the Inspector's report (31 March 2020) concluded a headroom of 2,226 dwellings (34% of the housing requirement) was appropriate given that the Local Plan included reliance on two long-term strategic allocations.

⁷ Paragraph 205 of the Inspector's Report on the examination of the South Oxfordshire Local Plan 2011-2034 (27 November 2020),

2.35 In respect of the LPS2, there are a number of factors which indicate that a significant headroom above the minimum housing requirement needs to be incorporated into the strategy, as follows.

Reliance on completions at Tendring Colchester Borders Garden Community

- 2.36 The housing trajectory in TP2 suggests significant reliance on a single strategic allocation: the Tendring Colchester Borders Garden Community (TCBGC). This is projected to contribute 1,250 dwellings by 2033/34 – 1,050 dwellings by 2033. Completions are relied on from 2024/25, and then throughout and beyond the plan period. As such, a delay to the development of the Garden Community will result in fewer dwellings being delivered within the plan period in total.
- 2.37 Policy SP8 of LPS1 requires a Development Plan Document (DPD) be prepared for the Garden Community.
- 2.38 Policy SP9 states that this DPD will be the vehicle through which the development boundary as well as the quantum of development will be determined, i.e. these are issues yet to be resolved.
- 2.39 Preparation of the TCBGC DPD is still at an early stage. It is unclear if the SA Scoping Report has even been prepared for consultation yet. On 16 December 2020, the Council's website reported that "*The planning of the new Garden Community is at an early stage and subject to the Local Plan being found sound and adopted by the Council. The next stage of the planning process will be a community-led master planning exercise.*"
- 2.40 Separately, the bespoke website set up by the relevant authorities regarding the TCBGC DPD⁸ reports that the aim is to submit the DPD for examination in late 2022 / early 2023. This timescale is predicated on initial early engagement commencing in early / mid 2021, and it is not clear if this has been initiated yet.
- 2.41 Optimistically, the DPD may be capable of being adopted mid-2023. However, 2023 / late 2024 would be a more realistic assumption.
- 2.42 Adoption of the DPD does not of course constitute the grant of planning consent. Following from adoption of the DPD, it will still be necessary to obtain planning permission (likely to be in outline form initial given the scale of development), subsequent reserved

⁸ <https://tcbgardencommunity.co.uk/>

matters consent to be obtained, all necessary conditions discharged, S106 obligations met, and S278 requirements agreed, prior to starting on site.

- 2.43 As to how long this process will take before development materialises, a February 2020 study by Lichfields⁹ identified that the average timeframe from validation of a planning application to completion of the first dwellings on schemes comprising over 2,000 dwellings was 8.4 years.
- 2.44 This includes an average of 2.3 years from obtaining the necessary planning approvals until first completions. As such, even if the planning approval period were to be vastly shorter than average for TCBGC (for example, if issues that led to schemes of comparable size having an average planning approval period of 6.1 years were to be resolved through the DPD, and subsequently shorten the period between all planning approvals being in place and the first completion of dwellings) it is still totally unfeasible to suggest that first completions on the TCBGC could occur as soon as 2024/25.
- 2.45 Based on comparably sized schemes elsewhere, it could be legitimately argued that no reliance should be made for completions from TCBGC until at least 2031.
- 2.46 However, in our view it could be possible for completions to be delivered from 2027/28. Taking account of what would still represent an optimistic view on lead-in times, it would still be necessary to review the contribution TP2 projects TCBGC will make to housing delivery in 2024-2027, i.e. subtraction of **250 dwellings**. In this scenario, the provision of a reasonably large headroom by LPS2 would still be necessary, as in the case of the South Oxfordshire Local Plan.

Reliance on Windfall

- 2.47 The supply reported in TP2 places significant reliance on contributions from predicted windfall. Particularly questionable is that the projected supply includes a contribution (**179 dwellings**) from unknown windfall from 2021/22.
- 2.48 As established through S78 appeal decisions¹⁰, allowing for a windfall contribution from as yet unknown sites in the early years of a housing land supply risks double counting, as it could be expected that such sites are already accounted for as sites with planning permission.

⁹ Start to Finish Second Edition

¹⁰ See, for example, appeal reference APP/J3720/A/14/2217495 Land north of Milcote Road, Welford-on Avon, Warwickshire

- 2.49 Overall, the Council rely on **1,876 dwellings** from 'additional windfall to be applied to known windfall' for the period up to 2033. This represents 16% of the minimum requirement for the period 2020-2033.
- 2.50 Whilst the NPPF allows, in principle, for an allowance from windfall to be made (subject to criteria being met), the heavy reliance in this instance suggests our view the need to ensure a reasonably large headroom in the housing trajectory above the minimum housing requirement.

Contribution from Neighbourhood Plans

- 2.51 The reported supply relies on a contribution of **615 dwellings** from development to be brought forward by Neighbourhood Plans by 2033, including 535 dwellings through the Tiptree Neighbourhood Plan.
- 2.52 Notably, Policy SS14 of the LPS2 (which concerns development in Tiptree) does not, as presently worded, account for a situation where a Neighbourhood Plan is not made.
- 2.53 This is particularly relevant given that the Tiptree Neighbourhood Plan submitted for examination in 2020 was found to be fundamentally flawed, resulting in the Examiner concluding it could not proceed to referendum.

Previous Local Plan allocations without planning permission

- 2.54 The trajectory in TP2 relies on a contribution of **1,057 dwellings** from sites that were previously allocated, yet have not come forward for development. Clearly, there is a question as to whether these are deliverable, given the vast majority are still yet to achieve planning permission, let alone be delivered, despite having been previously allocated. We note that a number of such sites, despite already being allocated for Development Plan and being of a modest scale, are not projected to deliver dwellings until 2025/26 or even beyond. It is unclear what the Council expects to have changed in the next five / six years such that sites not considered deliverable now will be able to make a contribution later.

Overview

- 2.55 In the context of all of the above, we consider the provision of a headroom of only 1,457 dwellings (12%) above the minimum requirement for the plan period to be wholly inadequate. This becomes even more apparent when one compares the approach with

other Local Plans where a much greater headroom was provided, even when this meant releasing more Green Belt – something that is not a constraint in Colchester's case.

- 2.56 The contribution relied upon from TCBGB 2024-2027; unknown windfall; Neighbourhood Plans; and allocations from the previous Local Plan for 2020-2033 totals **3,798 dwellings**.
- 2.57 Discounting all the projected contribution from the aforementioned contentious sources of supply results a revised delivery figure from TP2 Appendix 2 of **9,759 dwellings** – 2,341 short of the minimum 12,100 required for the period 2020-2033.
- 2.58 However, there is likely to be *some* contribution from both unknown windfalls and sites allocated in the previous Local Plan through the plan period (although there is nevertheless considerable doubt as to the extent delivery from these sources of supply this can be relied upon). In any case, if one were to discount the contribution which is *clearly* inappropriate to rely on (250 dwellings from TCBGC 2024-2027 and 179 dwellings from unknown windfall 2021/22) the total purported supply reduces to **13,128** – a headroom above the minimum requirement of just **1,028 dwellings**, a mere **8%** of the minimum requirement.
- 2.59 There is an additional separate matter that also relevant to the issue of the degree of flexibility required in the case of LPS2. In terms of being able to respond to changing circumstances and meet development needs in full, there is a change that has already occurred since submission of the LPS1 and LPS2: as already discussed, the local housing need as per current national policy. This generates a housing need for the period 2020-2033 of 13,793 in total.
- 2.60 Whilst the LPS2 is not required to be in conformity with the NPPF 2019, it would be patently irrational to totally disregard how LPS2's purported supply compares to this calculation of the latest housing needs position, based on an approach which has been established for some three years now.
- 2.61 When one does consider the latest calculation of local housing need against the projected LPS2 supply, the projected supply would not even meet this figure, let alone provide any headroom to ensure resilience. Instead, even if the TP2 Appendix 2 2020-2033 projected supply were to be delivered in full, there would still be a shortfall of 236 dwellings.
- 2.62 Even if one were to totally disregard the local housing needs position, the strategy for meeting development needs is nevertheless not imbued with sufficient flexibility to ensure that it can respond to changing circumstances. On the contrary, the strategy for meeting

housing needs is severely lacking of resilience with it placing reliance on a number of questionable assumption regarding delivery.

- 2.63 To cure this defect we suggest main modifications to include allocation of additional residential allocations; and, for those areas within which Neighbourhood Plan are relied upon to deliver homes, policies in place to ensure development comes forward in the event Neighbourhood Plans are not made / not made within the timescales required.

2,841 words

Appendix A – Key Numbers

1.1 Table 1 – Key numbers relevant to the housing requirement 2020-2033

1A	Local Plan Section 1 annualised dwelling requirement	920
1B	Local Plan Section 1 plan period (2013-2033) housing requirement	18,400
1C	Local Plan Examination Topic Paper 2 (TP2) reported requirement 2017-2033	14,720
1D	TP2 reported dwelling completions 2017-2020	3,337
1E	TP2 reported residual dwelling requirement 2020-2033	11,383
1F	Dwelling completions 2013-2017	3,292
1G	Shortfall (dwellings) 2013-2017	388
1H	Residual housing requirement 2017-2033 (1C+1G)	15,108
1I	Dwelling completions 2017-2020 (corrected) ¹	3,008
1J	Residual housing requirement 2020-2033 (1H-1I)	12,100
1K	Minimum annual housing requirement in accordance with NPPF 2019	1,061
1L	Minimum housing requirement 2020-2033 in accordance with NPPF 2019	13,793

1.2 Table 2 – Key numbers relevant to the housing supply 2020-2033

2A	TP2 Appendix 2 projected dwelling completions 2019-2034	15,186
2B	TP2 Appendix 2 projected dwelling completions 2020-2033	13,557
2C	TP2 Appendix 2 supply headroom above LPS1 minimum requirement (2B-1J)	1,457
2D	TP Appendix 2 headroom as percentage of minimum LPS1 requirement	12%
2E	TP Appendix 2 projected year of first completions from Tendring Colchester Borders Garden Community (TCBGC)	2024/25
2F	Estimated adoption year of TCBGC DPD	2023/24
2G	Time from estimated DPD adoption to TP2 Appendix 2's projected first TCBGC completions	1 year
2H	Average time from validation of first planning application to first completions on developments of 2,000+ dwellings²	8.4 years
2I	Revised optimistic date for first completions from TCBGC	2027/28
2J	TP2 Appendix 2 projected dwelling completions from TCBGC 2024-2027	250
2K	TP2 Appendix 2 projected completions from unknown windfall 2020-2033	1,876
2L	TP2 Appendix 2 projected completions from unknown windfall 2021/22	179
2M	TP2 Appendix 2 projected completions from Neighbourhood Plans 2020-2033	615
2N	TP2 Appendix 2 projected completions from previous Local Plan allocations	1,057

¹ TP2 reports 1,124 completions for 2019/20. At paragraph 1.5 of TP2, it is acknowledged that data for 2019/20 was incomplete at the time figures were compiled. Both the Housing Delivery Test 2020 Measurements and MHCLG Live Table 122 report that there were only 785 net dwellings completions in the Borough in 2019/20. MHCLG Live Table 122 also reports 1,175 completions for 2018/19, as opposed to 1,165 in TP2.

² Lichfield's Start to Finish Second Edition (February 2020)

2O	TP2 Appendix 2 projected completions 2020-2033, discounting completions from contentious sources ³	9,759
2P	Headroom above minimum requirement if completions from contentious sources discounted	-2,341
2Q	Headroom if completions from contentious sources discounted, as percentage of minimum requirement	n/a
2R	TP2 Appendix 2 projected completions 2020-2033, discounting wholly inappropriate element of purported supply⁴	13,128
2S	Headroom above minimum requirement once wholly inappropriate element of purported supply is discounted	1,018
2T	Headroom once wholly inappropriate element of purported supply is discounted, as percentage of minimum requirement	8%

³ TCBGB 2024-2027; unknown windfall; Neighbourhood Plans; and allocations from the previous Local Plan for 2020-2033

⁴ 250 dwellings from TCBGC 2024-2027 and 179 dwellings from unknown windfall 2021/22