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Publication Draft Colchester Local Plan: Section Two Statement of Common Ground with Natural England

March 2021 Update

Colchester Borough Council Local Plan

Statement of Common Ground

between

Natural England and Colchester Borough Council

1. This Updated Statement of Common Ground has been prepared to identify the areas of agreement between Natural England (NE) and Colchester Borough Council (CBC) as the Local Planning Authority (LPA) on matters relating to Section 2 of the Local Plan and the representations submitted by Natural England concerning that document. A Statement of Common Ground was signed in November 2017 and this Statement updates and replaces that Statement.

A Statement of Common Ground has also been prepared between Natural England and Colchester Borough Council, Braintree District Council and Tendring District Council on matters relating to the Section 1 Shared Strategic Plan and the representations submitted by Natural England concerning that document. An Updated Section 1 Statement of Common Ground was signed in December 2019.

This Statement lists the areas of the Local Plan that Natural England supports and the one unresolved issue.

2. General Matters

The LPA has worked with Natural England on the development of the Local Plan, the Sustainability Appraisal (SA), the Habitat Regulations Assessment and the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) from the outset. In accordance with the Town and Country Planning (Local Development) (England) Regulations, Natural England has been formally consulted at every stage of consultation.

Natural England submitted representations to both Section 1 and Section 2 of the Local Plan during the Publication Draft Local Plan consultation period (letter dated 11 August 2017).

The LPA carried out a Habitat Regulations Assessment (HRA) for the Section 2 Local Plan. Natural England made comments on the draft Appropriate Assessment report (June 2017) and the LPA subsequently made amendments to this to reflect comments from Natural England. The November 2017 Statement of Common Ground confirmed that the LPA concludes that the Section 2 Local Plan will not lead to adverse effects on the integrity of European sites either alone or in-combination.

The Section 2 HRA has since been updated given the time expired, the update to the Section 1 HRA and the Inspectors conclusions on this, and in light of updates in case law. This Updated HRA (March 2021) replaces all previous HRA drafts. The Appropriate Assessment stage identified whether likely significant effect will, in light of mitigation and avoidance measures, result in adverse effects on the integrity (AEol) of the European sites either alone or in-combination with other plans or projects. It can be concluded that no AEol will occur for any European sites subject to the provision of safeguarding and mitigation measures as detailed in Chapter 5 of the HRA, which have been included in the Main Modifications Schedule. Natural England agrees with the key conclusions and recommendations arising from the Appropriate Assessment (AA) and the safeguards and mitigation measures identified in the AA to ensure that there will be no AEol of European Sites as a consequence of the Plan, either alone or in combination with other plans or projects. Natural England is also satisfied that these safeguards and mitigation measures have been appropriately addressed through the development and adoption of the Essex Coast RAMS and through proposed modifications to relevant policies of the submission Local Plan, as set out in the Main Modifications Schedule.

CBC and NE agree that the HRA has been prepared in accordance with recent case law findings, including most notably the recent 'People over Wind' and 'Holohan' rulings from the Court of Justice for the European Union (CJEU). In addition to this, the HRA takes into consideration the '*Wealden*' judgement and the '*Dutch Nitrogen Case*' judgement from the CJEU. This is detailed in paragraphs 1.18-1.28 of the HRA.

Natural England support the Local Plan in the following areas:

- (a) NE support the decision of Greater Essex LPAs to work together to implement a RAMS.
- (b) NE are pleased to see the inclusion of 'protection and enhancement of designated sites, geodiversity and soils' within the Natural Environment Objective.
- (c) NE are pleased to see amendments to Policy ENV1 regarding the designated sites and inclusion of protection for SSSIs and the Dedham Vale AONB following earlier advice.

(d) NE welcomes the inclusion of using green infrastructure within the climate change policy (rep S1.079a/ 6880).

3. Unresolved issues

(a) Natural England request policies on soil and land quality to protect the best and most versatile agricultural land (rep S1.079a/ 6887).

SA framework includes a soil and land quality objective. Therefore, all policies and sites have been assessed in relation to their impact on soil and land quality. The LPA consider that it is not necessary to include a policy on every issue. The NPPF includes a paragraph on the best and most versatile agricultural land (paragraph 112) and the LPA believe that the inclusion of a soil and land quality would be unnecessary repetition.

As part of the process of preparing this Statement of Common Ground, Natural England has suggested the following wording for the Inspector to respectfully consider.

Suggested Policy:

“Unless designated by this Plan or a Neighbourhood Development Plan, the use of Grades 1, 2 and 3a of the Agricultural Land Classification for any form of development not associated with agriculture or forestry will not be permitted unless need for the development outweighs the need to protect such land in the long term. Where development is permitted it should, as far as possible, use the lowest grade of land suitable for that development. Developments shall also be consistent with all other Local Plan policies.”

Supporting Text: “It is government policy to safeguard the long term potential of best and most versatile agricultural land in conserving soil resources. The planning system should protect and enhance valued soil because it is an important natural resource. Fertile soil is vital for the production of food, timber, fibre and other crops which are all essential for human existence and which provide economic prosperity.

Soil is essential for achieving a range of important ecosystem services and functions including food production, carbon storage and climate regulation, water filtration, flood management and support for biodiversity and wildlife. Soil is a finite resource, it needs to be conserved and managed in a sustainable way.

Some of the most significant impacts on soils occur as a result of activities associated with construction activity. A Code of Practice has been developed by Defra to assist anyone involved in the construction sector to better protect the soil resources with which they work and in doing so minimise the risk of environmental harm.”

COLCHESTER BOROUGH COUNCIL /NATURAL ENGLAND AGREED AMENDMENTS TO LOCAL PLAN SECTION TWO

Table 1

Rep number	Local Plan Section or Policy	Natural England Representation	LPA's agreed response with Natural England
S1.079a/6876	SG7	We advise that the policy is reworded to include the following: "Developers will be expected to contribute towards the delivery of relevant infrastructure. They will either make direct provision or will contribute towards the provision of local and strategic infrastructure required by the development either alone or cumulatively with other developments. Measures required to mitigate the impacts of recreational disturbance on European Protected sites will be delivered as detailed in the Recreation Avoidance and Mitigation Strategy"	<p>It is recommended that the following sentence is added to the end of the fourth paragraph of policy SG7:</p> <p>"Measures required to mitigate the impacts of recreational disturbance on European Sites will be delivered as detailed in the adopted Essex Coast Recreational disturbance Avoidance and Mitigation Strategy."</p> <p>An Essex Coast RAMS Strategy Document has been prepared and CBC adopted the Essex Coast RAMS SPD in August 2020.</p>
S1.079a/6877	ENV1	Policy commitment must be made toward the production of a Recreational disturbance Avoidance and Mitigation Strategy. Advise that there is a specific protection for SSSIs which fall outside of the RAMS to be protected from recreational pressure, included within ENV1 or ENV3. Advise amendment as follows: Development proposals 'which impact upon' rather than just 'within' designated areas or within the Coastal Protection	<p>It is recommended that the following is added as a new part D of policy ENV1:</p> <p>"A Recreational disturbance Avoidance and Mitigation Strategy has been completed in compliance with the Habitats Directive and Habitats Regulations. Further to Section 1 Policy SP2, contributions will be secured from qualifying residential development, within the</p>

		<p>Belt will need to comply with policies ENV2 and ENV4 to ensure indirect impacts are also covered.</p>	<p>Zones of Influence as defined in the adopted RAMS, towards mitigation measures identified in the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS)."</p> <p>It is recommended that paragraphs 13.4 and 13.5 are replaced with the following paragraph:</p> <p>"The Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) Strategy Document was adopted in 2019 and the SPD was adopted in 2020. The Essex Coast RAMS aims to deliver the mitigation necessary to avoid adverse effects on the integrity of habitats sites from the in-combination impacts of residential development in Essex. The Essex Coast RAMS identifies a detailed programme of strategic avoidance and mitigation measures which are to be funded by developer contributions from all qualifying residential development within the Zones of Influence as defined in the adopted RAMS."</p> <p>The LPA agree with NEs suggestion to include the words 'which impact upon' in relation to designated areas and the coastal protection belt and the following minor modification to policy ENV1 has been made to address this point (page 95): It is recommended that the second paragraph of policy ENV1 is amended as follows:</p>
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			<p>“Development proposals within which impact upon designated areas or within the Coastal Protection Belt...”</p> <p>Policy ENV1 does include specific protection for SSSIs, which fall outside of the RAMS, i.e. outside of European Sites (second paragraph). SSSIs are also referred to in paragraph 13.6.</p> <p>Policy ENV3 aims to protect, enhance and deliver a comprehensive green infrastructure network, which includes benefits to communities, wildlife and the environment.</p>
S1.079a/6878	ENV2 (para 13.19)	Caution should be used around term irreplaceable in relation to natural assets - doesn't align with aspirations of Shoreline Management Plan which aims to replace lost saltmarsh which cannot therefore be regarded as irreplaceable. Policy could be strengthened by the inclusion of seascape as well as landscape character of the coast.	<p>The LPA agree with NEs suggestion and the following minor modifications to paragraph 13.19 and policy ENV2 have been included in the Minor Modifications Table:</p> <p>Amend the first sentence of paragraph 13.19; The Coastal Protection Belt has a unique and irreplaceable character, which should be strongly protected and enhanced.</p> <p>It is recommended that ‘and seascape’ is included in criterion (iii), after the word landscape (page 99).</p>
S1.079a/6879	ENV3	Advise that there is a specific protection for SSSI's which fall outside of the RAMS to be protected from recreational pressure, included wither within ENV1 OR ENV3.	Policy ENV1 does include specific protection for SSSIs, which fall outside of the RAMS, i.e. outside of European Sites (second paragraph). SSSIs are also referred to in paragraph 13.6.

S1.079a/ 6881	SS9	Incorporate wording from Appropriate Assessment on commitment to ensure that phasing of development does not exceed infrastructure capabilities and that necessary upgrades are in place prior to development coming forward.	Policy SS9 does include wording covering this issue: 'Development should not commence until adequate waste water and sewage treatment capacity is available to serve the new housing'. Furthermore, paragraphs 14.180-14.182 refer to this issue and make reference to the appropriate assessment. The need for the provision of adequate waste water infrastructure is also a requirement of policy PP1. No policy change is considered necessary.
S1.079a/ 6882	SS12c	Include following point: Mersea Island Caravan Parks - (ii) Help protect the integrity of European sites and minimise disturbance to migratory or over wintering birds using the sites; expand upon with: if caravan site owners do not wish to participate in the RAMS process then any future extensions will require their own HRA and where required AA.	The LPA agree with NEs suggestion and the following minor modification to policy SS12c is included in the Minor Modifications Table in order to address this point (page 175): Amend criteria (ii): Help protect the integrity of European sites and minimise disturbance to migratory or over wintering birds designated breeding and wintering species using the sites; Any future extensions to caravan parks will require their own HRA and where required AA.
S1.079a/ 6883	OV1 & OV2	Include text on HRA screening within policy rather just in explanatory text.	The LPA agree with NEs suggestion and the following minor modification to policies OV1 & OV2 has been included in the Minor Modifications Table to address this point (page 183/184): Move the following text from para 14.246 to Policy OV1 & include in OV2: Proposals in close proximity to a European site must demonstrate

			through HRA screening that the scheme will not lead to likely significant effects to the integrity of the European site. Where this cannot be ruled out a full appropriate assessment will be required to be undertaken.
S1.079a/6884	DM6	Move text on HRA screening from explanatory text to policy, along with wording on mechanisms to prevent fly tipping the introduction of invasive species and vandalism.	<p>The LPA agree with NEs suggestion and the following minor modification to policy DM6 has been included in the Minor Modifications Table to address this point (page 194):</p> <p>Move text currently in para 15.32 to the end of Policy DM6: "Proposals in close proximity to a European site must demonstrate through HRA screening that the scheme will not lead to likely significant effects to the integrity of the European Site. Additionally, any planning application within 400 metres of a European site must provide mechanisms to prevent fly tipping, the introduction of invasive species and vandalism. Where this cannot be ruled out a full appropriate assessment will be required to be undertaken."</p>
S1.079a/6885	DM7	We advise adding Sites of Special Scientific Interest to the following wording: "Proposals that are likely to have an adverse impact on the integrity of	The LPA agree with NEs suggestion and the following minor modification to policy DM7 has been included in the Minor Modifications Table to address this point (page 196):

		European sites or the Dedham Vale AONB will not be supported."	Amend paragraph 3 in the policy to read: "Proposals that are likely to have an adverse impact on the integrity of European s Sites, Sites of Special Scientific Interest or the Dedham Vale AONB will not be supported."
S1.079a/ 6886	DM25	The Local plan HRA AA states that as this policy promotes District Heating projects in the garden communities, which are innovative projects and the impacts are unknown, they will require a project level HRA and if necessary AA. This has not been included within the policy wording for DM25 and we advise this is added in line with the HRA.	<p>The LPA agree with NEs suggestion and the following minor modification to policy DM25 has been included in the Minor Modifications Table to address this point (page 235):</p> <p>Amend the 6th criteria of the policy as follows; ".....District Heating Networks and Community led renewable energy initiatives at appropriate locations in the Borough, which will need to be subject to a Habitats Regulation Assessment and if necessary an Appropriate Assessment, to help reduce Colchester's carbon footprint.</p>

SECTION 2 HABITAT REGULATIONS ASSESSMENT REPORT

Colchester Borough Council and Natural England agree that the policy safeguards set out below provide sufficient certainty that the necessary mitigation measures will be implemented in order to ensure that the Section 2 Colchester Local Plan (either alone or in combination with other plans or projects) would not adversely affect the integrity of any European site.

Recreational disturbance

Policy ENV1 includes the following reference to the Essex Coast RAMS, which has been adopted, both the Strategy Document and SPD, and is being implemented by Colchester Borough Council:

“D. Essex Coast RAMS

A Recreational disturbance Avoidance and Mitigation Strategy has been completed in compliance with the Habitats Directive and Habitats Regulations. Further to Section 1 Policy SP2, contributions will be secured from qualifying residential development, within the Zones of Influence as defined in the adopted RAMS, towards mitigation measures identified in the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS).”

Physical damage and loss

The following text will be added to the policy for each of the site allocations identified in the HRA as having moderate potential to support significant numbers of SPA birds:

“Before granting planning consent, wintering bird surveys will be undertaken at the appropriate time of year to identify any offsite functional habitat. In the unlikely event that significant numbers are identified, development must firstly avoid impacts. Where this is not possible, development must be phased to deliver habitat creation and management either on or off-site to mitigate any significant impacts. Any such habitat must be provided and fully functional before any development takes place which would affect significant numbers of SPA birds.”

Water Quantity and Quality

Existing avoidance and policy commitments in policies PP1 and SS9 are considered sufficient to avoid AEoI on European Sites.

Signed

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Natural England

Date: 10 March 2021