A120-A133 Link Road Memorandum of Understanding – February 2023

This memorandum of understanding is dated on 24th February 2023

Between:

(1) **ESSEX COUNTY COUNCIL**, of County Hall, Market Road, Chelmsford CM1 1QH (as **Essex County Council**);

(2) **COLCHESTER CITY COUNCIL**, of Town Hall, Colchester CO1 1FR (as **Colchester City Council**);

(3) TENDRING DISTRICT COUNCIL, of Town Hall, Station Rd, Clacton-on-Sea CO15 1SE (as **Tendring District Council**); and

(4) LATIMER (Tendring Colchester Borders Garden Community) Development Limited, of Level 6, 6 More London Place, London, SE1 2DA (as **Latimer**)**;**

(together, the **Parties**)

BACKGROUND

A. The Parties enter into this Memorandum of Understanding (the MOU) to govern the relationship, collaboration and co-operation of the Parties in relation to the delivery of the A120-A133 Link Road (the Link Road) to support the development of the Tendring Colchester Borders Garden Community (TCBGC) (the Purpose).

B. The Housing Infrastructure Fund (HIF) is a HM Government capital grant programme administered by the Department for Levelling Up, Housing and Communities (DLUHC) through its executive agency, Homes England. The aim of HIF is to deliver up to 100,000 new homes in England in the coming decades by funding the provision of new infrastructure to unlock residential development land.

C. Essex County Council, working with Colchester City Council and Tendring District Council (the Councils), was successful in securing £99.9m of HIF money to deliver the A120-A133 Link Road and Rapid Transit System (the RTS). Together this infrastructure will unlock circa 7,500 homes at TCBGC.

D. Essex County Council has entered into a funding agreement (the Grant Determination Agreement (GDA)) with Homes England on 19 November 2020. The GDA sets out the terms of the funding and the delivery conditions incumbent on Essex County Council as the grant recipient.

E. The GDA creates obligations on Essex County Council in respect of facilitating housing delivery and the recovery and recycling of HIF money. These obligations are set out in the Housing Delivery Statement and Recovery and Recycling Strategy, respectively. Both documents are annexed to the GDA and as such form part of the funding agreement.

F. In relation to the Recovery and Recycling Strategy, Essex County Council is obligated to use all reasonable endeavours to recover the HIF money from development at TCBGC through planning contributions. That recovered money would then be 'recycled' to invest in infrastructure to enable additional housing growth projects to be brought forward.

G. Essex County Council has been working with Colchester City Council and Tendring District Council as local planning authorities in the planning of TCBGC in conjunction with the planning of the Link Road and the RTS. Reflecting this close working relationship, the Councils have established a Joint Committee as the decision-making body for the Development Plan Document (which also needs to be approved by Full Council at Colchester City Council and Tendring District Council at the Regulation 19 stage) and subsequent planning applications for development at TCBGC. The Councils have also been working in collaboration with Latimer as the strategic developer of TCBGC.

H. Since entering the GDA and securing the HIF money, design changes in response to public consultation on the planning application, high inflation and general rising costs for the Link Road have led to increases beyond original estimates and significant delays incurred to the original timetable. These cost increases and programme delays have created a gap in the funding available to deliver the Link Road. As the Link Road is required to unlock the 7,500 homes at TCBGC, this gap in funding will need to be met through other avenues including developer contributions provided through the development of TCBGC.

I. In order to resolve this funding shortfall issue, Essex County Council has agreed in principle with Homes England to changes to the GDA which, subject to formal contract variation, sets out a phased delivery approach to the Link Road. Phase 1 will be the construction of the A133 roundabout plus a partial Link Road with multiple access arrangements to the Garden Community, terminating at a roundabout south of Allen's Farm. Phase 2 will be a new junction on the A120 and completion of the Link Road. This phased delivery approach involves the use of the secured HIF money to deliver the first phase of the Link Road, and the Rapid Transit Scheme, with the second phase being funded through developer contributions from the development of TCBGC (or external funding sources that may become available), with continued involvement from the Councils to support the delivery of the full Link Road.

J. The result of these changes to the funding of the second phase of the Link Road being captured from the development, will be to reduce the funding available to be recovered and recycled to invest in infrastructure to enable additional housing growth projects to be brought forward as per Essex County Council's obligations in the original Grant Determination Agreement.

K. Essex County Council will, to the extent available and to the extent that they are able to, use any remaining HIF money not required for Phase 1 of the Link Road and the RTS to de-risk the second phase of the Link Road as far as possible, including by assembling the land required for the infrastructure ahead of its full delivery.

MOU PURPOSE

1.1 The Parties will work collaboratively and in good faith to achieve the Purpose.

1.2 The Parties agree that the delivery of the Link Road is essential to the delivery of TCBGC and without its delivery the TCBGC as contained within the Colchester and Tendring shared Section 1 Local Plans, will not be capable of being developed in its entirety.

1.3 The Parties acknowledge that the Colchester and Tendring shared Section 1 Local Plan requires funding of the Link Road to be secured prior to the approval of planning applications related to TCBGC and will work together to agree planning contributions that

satisfy that requirement. In this context, the Parties agree that the adopted Local Plan policy requires a legally binding agreement (s.106 or other suitable legal agreement) to be in place in respect of the funding of the entire Link Road ahead of the approval of planning applications for development at TCBGC.

1.4 Under this MOU, Latimer as master developer of TCBGC, confirms its commitment to fund the delivery of the second phase of the Link Road as soon as is practically and financially possible to do so in accordance with the emerging Development Plan Document and the general 'infrastructure first' ethos and garden community principles that TCBGC is being planned upon. The Parties agree to work together to identify future funding opportunities which will enable Latimer to accelerate the delivery of the second phase of the Link Road. The precise timescales and trigger points for funding will be established within agreed heads of terms for the s.106 Agreement (and/or other related legal agreements) associated with the TCBGC prior to the granting of planning permission and presented to the Joint Committee for approval and agreement alongside the TCBGC planning application.

1.5 The Parties acknowledge that future planning applications will be accompanied by detailed assessments of all transport impacts and will require an appropriate package of associated mitigation measures. In addition to the full Link Road, transport and movement mitigation measures, including measures to secure modal shift, will be assessed against such material, and the policy requirements set within the future adopted Development Plan Document and its supporting evidence base, as well as the wider Development Plan.

1.6 The Parties acknowledge that the funding of the infrastructure requirements in the TCB development plan evidence base, including phase 2 of the Link Road, from the development of TCBGC will only be possible if the overall delivery of TCBGC is financially viable. The financial viability of TCBGC will be judged through a comprehensive consideration of total scheme costs including planning contributions towards other planning policy requirements. Consideration of the costs of delivering the infrastructure set out in the DPD evidence, including the costs of second phase of the Link Road, will be assessed as part of ongoing viability reviews to ensure that the scheme remains viable and any additional funding can be recovered and recycled into additional infrastructure as per Essex County Council's obligations in the Grant Determination Agreement.

1.7 The Parties express their preference to fund the second phase of the Link Road through external grant funding opportunities if available and the Parties commit to work together to explore any such opportunities as they arise.

1.8 The Councils where necessary, will seek to:

1.8.1 secure additional public sector funding towards the second phase of the Link Road where such opportunities arise;

1.8.2 use available compulsory purchase powers and other such powers should they be necessary to allow for delivery of the second phase of the Link Road; on the basis of any administrative costs incurred in exercising these powers being recovered; and

1.8.3 consider potential investment finance opportunities should they provide a more beneficial mechanism to raise the additional funding with appropriate financial risk mitigation.

1.9 In working towards the achievement of the Purpose, the Parties agree to sharing information relevant to the planning, funding and delivery of the Link Road in a prompt and open manner where it is reasonable to do so subject to the necessary protocols related to the planning process.

NO CONTRACT

1.10 No decision, opinion, or discussion held pursuant to this MOU will bind the Parties in any way or with regard to any other contractual arrangements that exist between the Parties. Nothing in this MOU, or in any other document referred to in it shall be legally binding, create any kind of legitimate expectation or place a fetter on the exercise of any statutory function by any entity with statutory powers.

SIGNED ON BEHALF OF:

Essex County Council:

Steve Evison (Director for Sustainable Growth, Essex County Council)

Date: 24 February 2023

Colchester City Council:

Lindsay Barker (Executive Director for Place, Colchester City Council)

Date: 24 February 2023

Tendring District Council:

Gary Guiver (Director of Planning, Tendring District Council)

Date: 24 February 2023

AND

LATIMER (Tendring Colchester Borders Garden Community) Development Limited:

Richard Cook (Group Director of Development, Clarion Housing Group)

Date: 24th February 2023