TP2

Tendring Colchester Borders Garden Community Development Plan Document

Viability Topic Paper

Colchester City Council
Tendring District Council
Essex County Council

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A Colchester City Council All Member Briefing Note, 9th May 2023

Executive Summary

This Viability Topic Paper is one of a series that has been prepared to support the consideration of the Tendring Colchester Borders Garden Community Development Plan Document (DPD). The purpose of this 'Viability Topic Paper' is to provide background information on the overall position on the viability of the proposed Garden Community.

The principle of a new Garden Community was established in the shared strategic Section 1 of the Tendring and Colchester Local Plans. This process included an Examination in Public with Hearings and material considered during a period from 2018-2020. Viability was a main matter for discussion at the Section 1 Hearings, with a considerable body of infrastructure costing and viability material published and several focused hearing sessions held on the topic. The conclusions from the process were set out in December 2020, stating overall that "*the financial viability of the proposed Tendring / Colchester Borders GC is very strong*".

Additional evidence for the DPD in relation to viability has been prepared by Gerald Eve on behalf of the Councils. This has taken forward previously considered and agreed assumptions, together with updates where changes have been required to reflect the current proposals as set out in the DPD. This work has reconfirmed that the Garden Community is viable.

Representations on the Submission Version DPD by the lead developers – Latimer (Tendring Colchester Borders Garden Community) Developments Ltd and the 'Statement of Common Ground' state that they agree with the conclusions of the Council's viability evidence, and certain underpinning principles.

Several other representations reference viability matters. Others do not explicitly reference viability but do identify related concerns about the delivery of appropriate infrastructure and wider policy requirements set out in the DPD.

The Councils commissioned additional work to consider the robustness of the position as set out in the DPD. 'Intelligent Plans & Examinations' were commissioned to undertake an independent peer review, and Gerald Eve commissioned to provide further advice. This work has also considered some of the issues raised prior and in response to the consultation on the Submission Version DPD. Both pieces of work confirm that the current evidence base and position is appropriate, proportionate and robust.

The lead developer is currently in the process of evolving their proposals and are engaging with the Councils through a formal pre-application process. The precise scale of development, its phasing and confirmation on specific infrastructure works and scope of mitigation measures will become more defined over time. Property market conditions and associated assumptions will be subject to change, in particular given the long term delivery timescale of the Garden Community.

The position on viability will be monitored and reviewed at an appropriate time both when more detailed information on the proposals becomes available.

1 Introduction

1.1 Colchester City Council, Tendring District Council and Essex County Council (the Councils) are working together to produce a Development Plan Document (DPD) for a new Garden Community to be located to the east of Colchester.

1.2 Proposals for the Tendring Colchester Borders Garden Community have been confirmed in the shared Section 1 of the adopted Tendring and Colchester Local Plans.

1.3 This **Viability Topic Paper** is one of a series that has been prepared to draw together the most relevant information, summarise the position on and enable the consideration of key issues relating to the viability of the proposals.

1.4 Understanding the viability of development is an important requirement of the planning system. It is a key factor in the overall assessment of the deliverability of plans and planning policies, albeit the weight to be apportioned to viability is a matter for the decision maker. This is particularly important in relation to the largest and most strategic sites such as proposed major urban extensions, new settlements and Garden Towns & Villages, as these sites will be of key significance in addressing future housing and infrastructure needs, as well as creating quality places for the future.

1.5 Given the early stage of concept evolution of such proposals at plan making stage, viability work is often undertaken at a strategic level, which in line with established national policy & guidance, is proportionate and pragmatic in its approach. Long term proposals may be in the early stages of their design, initial concepts will evolve as more detailed proposals evolve through further planning, and the wider economic conditions will change over time.

1.6 At plan making stage, viability assessments draw upon a range of data sources and assumptions and present a reasonable consideration of viability based upon standard assumptions and the best available evidence. They are a ‘point in time’ assessment and generally do not rely upon assumptions in relation to the future. They examine the overall viability of concepts together with sensitivity and scenario testing to provide a broad overview of viability under alternative scenarios and assumptions.

1.7 The examination of the shared Section 1 considered the viability of the proposal in some detail over the period 2018-2020. This included a number of evidence base studies and detailed assessments prepared by the Councils and consultants. This work was considered by a Planning Inspector who concluded that the Garden Community was viable, leading to the adoption of Section 1 by both Colchester City Council and Tendring District Council (‘the Councils’).

The Councils have instructed independent viability consultants to undertake additional work to consider the viability of the Garden Community in light of changes since Section 1 was adopted.

2 Approach to and consideration of viability matters for the North Essex Shared Section 1 Local Plans

2.1 In October 2017, the Councils (at that time together with Braintree District Council – collectively known as the 'North Essex Authorities') submitted their respective Local Plans to the Planning Inspectorate for examination.

2.2 The Local Plans include a shared Section 1, which contained strategic policies relevant to all the Councils including the strategic approach to housing, employment, infrastructure and also the proposed location of strategic growth via Garden Communities across the North Essex area. Section 2 of each Local Plan set out local policies and allocations for each Council area.

2.3 The shared Section 1 part of the Local Plans was examined from 2018-2020. During this time a wide range of information from numerous sources alongside detailed evidence base work was published and heavily scrutinised relating to the viability of the Tendring Colchester Borders Garden Community (as well as 2 other Garden Communities being proposed as part of the Submission Version plan).

2.4 The key studies and findings are set out below.

North Essex Local Plans (Section 1) Viability Assessment (Hyas Associates Ltd, 2017)

2.5 Hyas Associates Ltd prepared the North Essex Local Plans (Section 1) Viability Assessment (Main Report & Appendices) in April 2017 (Section 1 examination evidence base document reference: EB013).

2.6 This report tested the viability of policies as set out in the (shared) Section 1, in line with the requirements of the National Planning Policy Framework ('NPPF') and other key guidance and best practice in relation to plan making and viability.

2.7 The study drew from a broad range of information and technical studies prepared as part of the wider Section 1 evidence base. Such studies provided the underpinning data and assumptions which formed the basis of the viability assessments. The following studies were particularly significant:

- 'Garden Communities Concept Feasibility Study' (AECOM & Cushman & Wakefield, 2016, Section 1 examination evidence base document references EB008 – parts 1, 2 ,3 & 4). This study provided a broad context of the scale of development, constraints, opportunities & infrastructure needs. The study also provided context to the local property markets and addressed key assumptions to be taken forward in testing viability including market values, build costs, profit levels, finance costs and land value benchmarks.
- 'North Essex Garden Communities Valuation Advice' (Cushman & Wakefield, 2017, Section 1 examination evidence base document reference EXD015). This study provided further commentary and consideration of the property market in relation to strategic land and the potential delivery of Garden Communities.

- 'Tendring Colchester Borders Concept Framework' (David Lock Associates, 2017, Section 1 examination evidence base document reference EB027). This study provided further definition to the scale and form of development on the Tendring Colchester Borders Garden Community.
- 'Infrastructure Delivery Plans' (Troy Planning, 2017, Section 1 examination evidence base document references CBC0006 & TDC023). Studies were prepared for each Council which set out the overall infrastructure implications relating to the Local Plans (including both Section 1 and Section 2 of each Local Plan).

2.8 The 2017 Viability Assessment work considered viability through a number of scenarios with alternative housing tenure mixes, build costs and sales values. The assessment indicated that the majority of scenarios generated residual land values in excess of current (agricultural) values, with the potential to achieve higher sales values and changes in tenure mix improving viability.

Shared Section 1 Examination in Public – Initial Hearings in 2018 & Inspector's findings

2.9 The 2017 Viability Assessment work was considered as part of the Examination in Public into the Shared Section 1 with initial Hearings taking place in January and May 2018.

2.10 Following the close of the Hearings, the Inspector set out initial findings in a letter dated 8th June 2018 (Section 1 examination reference IED011). This identified a range of issues and matters that required further consideration and included several matters relating to viability.

2.11 The Inspector acknowledged the 'strategic' nature of the work in light of the early stage of proposals, the residual valuation approach and importance of assumptions. The commentary accepted that generally reasonable assumptions had been adopted with respect to a broad range of key inputs. It flagged that the following areas needed further attention:

- Contributions towards the delivery of the proposed 'North Essex Rapid Transit System' and improvements to the strategic highways network (the latter of most relevance to the West of Braintree and Colchester Borders Garden Community proposals).
- The approach to land purchase and the need to recognise such costs as part of the viability appraisals, including any associated finance costs.
- A recommendation to sensitivity test appraisals with additional contingency allowances of 20% and 40% on relevant infrastructure items.
- The need to demonstrate through viability assessment that a reasonable uplift on current use values could be achieved, or alternatively clear evidence that an alternative approach (such as use of compulsory purchase powers) could be implemented.

2.12 The Inspector overall concluded in respect of all three proposed Garden Community sites that at this stage *"…. it has not been demonstrated that the*

GCs [Garden Communities] proposed in the submitted Plan are financially viable. Further viability assessment, taking account of all the points above, will need to be carried out on any GC proposals that the NEAs bring forward" (Letter from Inspector dated 8th June 2018, para 86)

Viability Assessment Update Report (Hyas Associates Ltd, 2019)

2.13 Hyas subsequently prepared a 'Viability Assessment Update Report' in 2019 to address the matters raised by the Inspector (Section 1 examination evidence base document reference EB068). This was prepared as an update of, and supplementary to, the previous Viability Assessment work published in 2017.

2.14 The study addressed the specific assumptions referenced by the Planning Inspector including the approach to contingencies, land costs, scheme financing and the pace of delivery. The viability modelling was also updated to provide additional functionality to reflect the full development timescales of the projects concerned.

2.15 In light of the time since the original assessment was undertaken (with the previous assessment considering information available from 2016/2017) a number of important assumptions were reviewed, reconsidered and updated. This included key aspects such as assumptions relating to residential sales values, build costs, strategic infrastructure costs, anticipated build out rates, treatment of contingencies (at differing rates up to a maximum of 40%), developer profit rates, and the consideration of inflation.

2.16 The analysis considered a small number of high-level scenarios including a 'Reference Case' based upon present day cost and value assumptions; 'Grant' related to securing funding from Government for early upfront strategic infrastructure, and 'Inflation' to recognise that over time all costs and values would be subject to inflation.

2.17 Additional evidence was also gathered by the Councils to consider a number of issues that were raised. Key additional information of relevance included:

- 'Infrastructure Planning Phasing & Delivery Study' (AECOM 2019, Section 1 examination evidence base document reference EB088). This study provided an indicative view of scheme phasing and informed consideration of strategic infrastructure provision and its timing.
- 'North Essex Garden Communities Infrastructure Order of Cost Estimate' (Gleeds, 2019, Section 1 examination evidence base document reference: EB087). This study provided a detailed cost plan for each of the Garden Communities including all development and infrastructure costs.
- 'Build out Rates Topic Paper' (North Essex Authorities, 2019, Section 1 examination evidence base document reference EB082). This paper provided an analysis of potential build out rates across the Garden Communities.
- 'North Essex Rapid Transit Study' (Jacobs, 2019, Section 1 examination evidence base document reference EB079). This study provided a more

detailed consideration of Rapid Transit, including routes, typology of service, infrastructure interventions, costs and timing of provision.

2.18 The assessments showed the residual land values and Internal Rates of Return (IRR) under the various scenarios and with different allowances for contingencies.

2.19 For Tendring Colchester Borders, a bid had been made for support via the 'Housing Infrastructure Fund' for grant funding to support the delivery of a Link Road between the A120 and A133, and early infrastructure to provide a Rapid Transit System to serve the Garden Community and the wider urban area of Colchester. This 'grant' scenario therefore best reflected the position for the Garden Community, which produced a strong position on viability. Under this scenario, residual land values for the Tendring Colchester Borders ranged from £211k per acre to £189k per acre, with IRRs of around 9%.

Supplementary Evidence

2.20 The Inspector requested additional viability modelling to be undertaken by the Councils. This included an assessment of the West of Braintree Garden Community to exclude an area of land proposed within Uttlesford District (as being outside of the Section 1 Plan) and also for all viability modelling to be run with a delivery rate of a maximum of 250 dwellings per annum.

2.21 Hyas Associates prepared 'North Essex Local Plans (Section 1) Viability Assessment Update Supplementary Information' in November 2019 (Section 1 examination evidence base document reference: EXD/058).

2.22 The assessments showed the residual land values and Internal Rates of Return under the scenarios and with different allowances for contingencies. Under the Grant scenario, residual land values for Tendring Colchester Borders ranged from £198k per acre to £176k per acre, with IRRs of around 9%.

Examination Hearings 2020 & Inspector's Final Conclusions

2.23 Further examination hearings were held from the 14th to the 30th January 2020. These included various sessions related to infrastructure and delivery mechanisms. The Inspector also included a full day "Viability Technical Seminar" which considered all material submitted in relation to viability from a range of different developers, their viability expert representatives and all other interested parties.

2.24 The Inspector considered all of the material and discussions at all of the Hearings from 2018-2020. Overall conclusions were set out in the final Examiner's report dated 10th December 2020 (Section 1 examination document: Examiners Report).

2.25 With respect to specific issues relating to Viability, the report included the following findings:

- On the issue of residual land values and appropriate 'competitive returns', the Inspector concluded that a margin of viability was considered to lie somewhere between a price of £50,000 and £100,000 per acre. (Para 205).

- On the issue of phasing of land purchase, the Inspector considered "*it is appropriate… to assume that land payments are staged throughout the development period*." (para 210).
- On the approach to contingencies, the Inspector agreed with the evidence base whereby a higher contingency allowance was to be applied only to specific infrastructure items (transport and utilities) which were most likely to be subject to unknown additional costs. (para 214).
- In relation to the rate of housing delivery, the Inspector considered that viability appraisals should be carried out on the basis of an average annual housing delivery rate of 250 dwellings per annum. (para 221)
- On inflation, the Inspector considered that the inflation scenarios were based on uncertain judgments about the future (para 226) and therefore did not provide a reliable indication of viability. (para 230)

2.26 The Inspector concluded overall that "*the financial viability of the proposed Tendring / Colchester Borders GC is very strong. With an appropriate 40% contingency allowance on transport and utilities infrastructure, it would enable a competitive land price to be paid, while leaving substantial headroom to meet any additional costs that might arise. This provides assurance that the necessary infrastructure, including RTS Route 1, the A120/A133 link road and local highway improvements, are deliverable in the time-frame necessary to support the GC's development. The evidence therefore shows that the GC is deliverable over its lifetime*.." (para 262) and "*I therefore conclude that development of the Tendring / Colchester Borders GC would enable the delivery of sustainable development in accordance with the NPPF's policies*" (para 266)

2.27 After consultation on modifications, Tendring District Council adopted Section 1 on 26th January 2021 and Colchester City Council adopted it on 1st February 2021.

3 Approach to and consideration of viability matters for the DPD

Updated national policy & guidance

3.1 The shared Section 1 had been submitted for examination in October 2017, and as such it had been considered in accordance with the National Planning Policy Framework (NPPF) as published in 2012

3.2 The NPPF was comprehensively revised and published by the then Ministry of Housing, Communities and Local Government (MHCLG) on 24 July 2018, and has continued to be updated since (latest version). In addition, the viability section of the Planning Practice Guidance (PPG) was also updated at the same time. The July revisions were the first major update to national planning policy and guidance since the material was first issued in 2012.

3.3 The revised policy and guidance provide an updated context within which viability should be considered. The updates provide greater clarity to the application of policy and guidance also introducing a greater emphasis on viability testing at plan-making stage.

3.4 The reference to large scale development was expanded upon from that previously set out at para 52 of the previous (2012) NPPF. The updated Framework now sets out a broader range of considerations and an important footnote has been added to recognise that the delivery of the very largest schemes may go beyond plan periods and that associated infrastructure requirements may not be capable of being identified fully at the outset and will need to be subject to ongoing review and monitoring. This additional understanding and flexibility was introduced to provide clarity that a pragmatic and proportionate approach would be needed in the consideration of large scale, long term projects, where a degree of uncertainty is inevitable.

3.5 The viability sections of the PPG (section 10) were rewritten. The changes largely provided clarity and confirmed good practice, rather than prescribed a new approach or methodology.

DPD Evidence Financial Assessment Update

3.6 Gerald Eve LLP were instructed by the Councils to provide an update to the 'Financial Viability Evidence' (FVE) of the Tendring Colchester Borders Garden Community Development Plan Document. The report is part of the evidence base for the DPD (Financial Viability Assessment Update, Gerald Eve, April 2023, DPD evidence base document reference EB24).

3.7 The FVE has regard to changes in circumstances (as set out in Table 3.2) since the North Essex Authorities Shared Strategic Section 1 was endorsed by the Inspector's report of 2020. The approach also reflects the recommended approach set out in Planning Practice Guidance including standardised inputs, as set out in Paragraph 58 of the National Planning Policy Framework. It was also prepared in accordance with the RICS Guidance note Financial Viability in Planning (2021) and the RICS Professional Statement on Conduct and Reporting in viability.

3.8 The purpose of the report is to provide additional assurance that all policy requirements as set out in the DPD are robust, meet national policy requirements and are financially viable. Gerald Eve explain that the FVE is a process of assessing whether the Garden Community (as set out in the DPD and considered in more detail via the Strategic Masterplan work in the evidence base) is financially viable, by testing whether the value generated by a development is more than the cost of developing it.

3.9 GE were supported by Veale and Sanders (V&S), Quantity Surveyors, who provided advice and an indexing update to the proposed construction and infrastructure costs.

3.10 The financial appraisal was prepared in accordance with related information set out in the following documents:

- 'Tendring Colchester Borders Garden Community Strategic Framework Masterplan' (Prior + Partners & others, Feb 2023 evidence base document reference EB1) which provides an updated (illustrative) position on land requirements and development uses.
- 'Transport Evidence Part 2 – Transport Measures' (ITP, Jacobs & ECC, Feb 2023, DPD evidence base document reference EB20) which updates the position on anticipated transport infrastructure & costs.
- 'Infrastructure Delivery, Phasing and Funding Plan' (CCC, TDC & ECC, Feb 2023, DPD evidence base document reference EB17) which provides a full update of all infrastructure requirements, costs and phasing.

3.11 A financial appraisal was undertaken using an industry standard licensed Argus development appraisal to assess the viability of the Scheme. The appraisal has regard to current-day costs and values, with a number of additional sensitivity tests based on higher and lower costs and values.

3.12 Similar to the viability evidence prepared for Section 1, GE approached the cash flow modelling using a Master Developer methodology. This assumed one party would purchase the land required and undertake the site wide infrastructure works whilst receiving revenue from selling off serviced land plots to housebuilder developers. GE considered this methodology for assessing the delivery and viability of a Garden Community to be reasonable and in line with wider market practice.

3.13 Gerald Eve conclude that the evidence demonstrates that the Garden Community appears able to viably comply with the planning policy contributions as set out in local policy. The study considers a number of return metrics, including its ability to meet benchmark land value expectations, appropriate rates of profit to developers and the 'Internal rate of return' (IRR) in respect of a master developer approach. Gerald Eve consider that a development scheme which complies with associated DPD policies and assumed infrastructure requirements is viable.

Comparison of key viability assumptions

3.14 As set out in chapter 2 of this Topic Paper, previous detailed viability evidence was considered as part of the examination of the North Essex Authorities' shared Section 1. A number of assumptions were debated and considered by the Inspector which led to the final view that the proposal for the Garden Community was considered to be viable and deliverable.

3.15 Where appropriate, assumptions that were debated at Section 1 were reviewed and carried forward into the updated Gerald Eve assessment for the DPD. The key assumptions that were carried forward are set out in Table 3.1 below.

Table 3.1: Viability Assumptions consistent between Section 1 and the DPD

Assumption	Comment on approach
Master developer approach	Same viability methodology based on a master developer bringing forward the full scheme and strategic infrastructure, with serviced plots brought forward by a range of housebuilders/plot developers.
Cashflow	Use of industry standard Argus Developer model. The same cashflow based approach, over the full lifetime of the development period.
Land costs & drawn down	Land draw down and costs incorporated on a phased basis throughout the development as per the approach for Section 1.
Delivery rate	Maximum delivery rate of 250 dwellings per annum – noting that the Councils had produced evidence to support a potentially higher rate, but the Inspector considered for the purposes of Section 1 that 250 dwellings per annum was to be applied.
Contingencies	Various rates applied, with a maximum of 40% on specific transport & utilities costs. This aligns with the Inspector's conclusion on the work done for Section 1, with the highest rates only being appropriate for specific items which may have the greatest uncertainty due to their complexity and/or scale.
Growth modelling / allowance for inflation	The assessment is a 'point in time' assessment based upon the best available evidence. As per the Inspector's conclusion on Section 1, uncertainties relating to future property market conditions/cycles and changes in costs/values have not been included.
Fees & Profit rates	Standard assumptions – as per work done for Section 1.
Benchmark land value	At Section 1, the Inspector concluded that the Benchmark Land Value could range between £50,000 to £100,000 per acre. Gerald Eve have undertaken analysis based upon

	the top value in the range quoted by the Inspector on the work undertaken for Section 1 (£100k per acre) to ensure robust testing of viability.

3.16 In light of the passage of time since the Section 1 evidence on viability was prepared, and the additional evidence gathering work that the Councils have now undertaken, several assumptions have been updated. The key assumptions that have been updated are set out in Table 3.2 below.

Table 3.2: Viability Assumptions updated between Section 1 and the DPD

Assumption	Comment on approach
Build costs	Updated by Veale & Saunders (and included in the Gerald Eve appraisals) to reflect the position at the time of the assessment. As per the Section 1 approach, the assumptions relate to the latest BCIS cost index at the time the appraisals were undertaken.
Infrastructure costs	All cost items were updated by Veale & Sanders based upon the infrastructure assessment work undertaken for Section 1 (with cost inflation applied to the position at the time of the assessment). Transport infrastructure requirements have been updated to reflect the list of measures as set out in the Tendring Colchester Borders Garden Community Transport Evidence Part 2: Transport measures' (ECC, ITP & Jacobs, Feb 2023, DPD evidence base reference EB20). All requirements in accordance with the 'Infrastructure Delivery, Phasing & Funding Plan' (Councils, Feb 2023, DPD evidence base reference EB017).
A120-A133 Link Rd costs	Updated to reflect the position as reported by ECC at the time of the assessment, that an additional sum of £21.25m was required to fund the full delivery of the road. This additional amount was added into the viability appraisal as an additional development cost in 2025.
Residential Sales Values	Updated by Gerald Eve to reflect the market evidence at the time of the assessment.
Proposed scheme – uses & land area	Updated by Gerald Eve to accord with the work undertaken for the strategic masterplan.
Sensitivity & scenario testing	Gerald Eve have run additional tests in relation to: • A £20m reduction in strategic infrastructure costs. • A £20m increase in infrastructure costs.

	• A potential uplift in sales values to reflect a 'placemaking premium' 10 years into the development programme.
Finance rate	Gerald Eve have applied a rate of 7.5% to reflect the market position at the time of the assessment having regard to the size and nature of the development (the Section 1 assumption had been 6%).

Approach to funding & delivery of the A120-A133 Link Road

3.17 Policy SP6 of the shared Section 1 states that before any planning approval can be granted for development within the Tending Colchester Borders Garden Community, the A120-A133 Link Road and works related to the delivery of a 'Rapid Transit System' (RTS) must have secured planning consent and funding approval.

3.18 Essex County Council working in collaboration with Colchester City Council and Tendring District Council was awarded £99.9m from Homes England (HE) following a bid submitted to the Housing Infrastructure Fund (HIF). The bid covered the construction of a Link Road between the A120-A133 which would provide access to the Garden Community, and the provision of initial works of the RTS linking the Garden Community into the wider area. Such works were to be completed by March 2025.

3.19 Planning Permission for the Link Road was granted in November 2021 (application ref: CC/TEN/31/21).

3.20 Works related to the RTS began in summer 2023, with a start on the construction of a dedicated RTS corridor within the Colchester urban area, with further improvements to be implemented in a phased manner in 2024-2025.

3.21 In early 2022, ECC advised HE that there was an estimated increased cost of £21.25m to enable delivery of the full Link Road, and an elongation of the anticipated delivery programme to the end of March 2026. An alternative approach was agreed between ECC and HE, whereby the Link Road was now to be constructed in phases, with monies secured via HIF to enable delivery of a first phase of the Link Road (maintaining all access junctions to the Garden Community and the A133 connection to the south; A120 connection to the north to be a second phase), alongside unchanged RTS works.

3.22 Given the change in circumstances, and the consequent funding shortfall between the HIF award and cost of the full Link Road, a 'Memorandum of Understanding' (MoU) was agreed between the Councils and Latimer dated on 24th February 2023 (DPD evidence base document reference EB18).

3.23 The MoU acknowledged 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*" (para 1.3).

3.24 The MoU went on to confirm that: "*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*." (para 1.4)

3.25 The MoU confirms that the parties "*agree to work together to identify future funding opportunities"* (para 1.4) and "*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*." (para 1.7).

3.26 Material presented to the Joint Committee on 27th February 2023 stated that "*Latimer are absolutely committed to the full delivery of the new Link Road"* and make specific reference to *"including developer contributions towards the funding of the northern connection if necessary".*

3.27 As set out in Table 3.2, an additional £21.25m has been included in the Gerald Eve financial viability evidence to reflect the additional stated cost escalation of the Link Road.

Future viability position & potential recovery of HIF funding

3.28 As set out at para 3.19, funding from the Housing Infrastructure Fund is enabling the delivery of initial offsite works for the Colchester Rapid Transit System and the first phase of the A120-A133 Link Road. These infrastructure works are directly related to and effectively 'unlock' the development of TCBGC. The Inspector when considering viability for Section 1 judged that TCBGC would be viable because it had secured this funding.

3.29 Due to this direct dependency, there is a requirement within the 'Grant Funding Agreement' between ECC and Homes England that ECC will seek to maximise the potential recovery of the HIF funding from the development of the Garden Community. In practice this means that the developers of TCBGC will be expected to contribute towards HIF funded works through planning contributions as the Garden Community is developed. As the master developer, Latimer has agreed with the principle of HIF recovery and the position is acknowledged within the MoU which references the need for "*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*" (MoU para 1.6).

3.30 Importantly, the potential for HIF recovery is dependent on viability. In that respect recovery is residual in nature – it will only be required to be paid if a future planning application/s (considered to be policy compliant and acceptable to the Councils) generate a surplus beyond what may be considered to be reasonable returns to the landowner/developer, as assessed via an agreed viability review process. Should recovery payments be viable, they would be used to support further housing delivery in the area in addition to the homes unlocked by the HIF funding.

3.31 As set out at para 3.28, the Gerald Eve financial viability evidence now assumes additional costs of £21.25m being secured as developer contributions to support delivery of the Link Rd. This evidence indicates that based upon current assumptions including the direct £21.25m funding contribution, it will not be possible to recover any additional HIF funding. However, should viability improve in the future the Councils will seek to trigger contributions towards HIF recovery. In that respect, HIF recovery will remain under review throughout the entirety of the delivery of TCBGC.

Colchester Full Council – decision to proceed to consultation

3.32 On 23rd March 2023, Full Council of Colchester City Council considered the recommendation from the Joint Committee to proceed to consultation and submission of the DPD. The motion was approved and adopted (thirty five voted for, two voted against and two abstained from voting).

3.33 As part of the decision, Full Council agreed that Colchester City Council would seek to work in collaboration with Tendring District Council and Essex County Council to secure additional understanding with the developers in relation to principles relating to the delivery of infrastructure and the approach to the viability methodology. This was to draw on independent advice and support as required, and ideally was to be undertaken prior to commencing consultation.

3.34 Independent consultancy support was taken forward by the Councils in 2 key areas in relation to the above decision at Colchester Full Council.

- An independent peer review of the DPD to assess its appropriateness to move forward to consultation and examination.
- The commissioning of additional advice from Gerald Eve on the appropriate approach (in planning and commercial terms) with respect to phasing, viability assessment and negotiating with the site developers (and other stakeholders) to secure policy and infrastructure objectives.

Independent Peer Review of the Development Plan Document

3.35 Intelligent Plans & Examination (IPE) were commissioned to provide an independent peer review of the Development Plan Document (DPD) to consider the appropriateness to move forward to consultation and examination. Particular advice was sought in relation to:

- the delivery of the A120 – A133 Link Road;
- the stewardship arrangements; and
- overall deliverability and viability matters.

3.36 IPE are an independent specialist consultancy who advise Councils on the approach to Local Plans and other planning matters. They are staffed by individuals who were previously part of the Senior Management Team in the Planning Inspectorate (PINS). The review was undertaken by Keith Holland (BA (Hons) DipTP MRTPI ARICS) who had specific responsibility for Development Plans, Community Infrastructure Levy examinations and advising Government on national planning policy and guidance.

3.37 A copy of the IPE report has been added to the evidence base (Tendring Colchester Borders Garden Community Development Plan Document, Review prior to Regulation 19 Consultation and Submission for Examination, IPE, March 2023, DPD evidence base document reference EB25).

3.38 The summary conclusions from IPE are set out below:

- The DPD was considered to be a comprehensive and clear document and the evidence base was robust, relevant and proportionate, and provided a solid basis for proceeding to consultation and thereafter submission for examination.
- The Gerald Eve Financial Viability Evidence was considered to demonstrate that the proposed Garden Community was a viable proposition.
- The available evidence indicated that the Councils could rely on the Master Developer to proceed on the basis of a viable scheme producing sufficient commercial returns to a developer, with additional confidence being provided by the MoU in respect of funding for the Link Road.
- There was no need to "completely resolve" the funding position for the Link Road and delay the progress of the DPD. IPE considered that progressing the DPD as quickly as possible would help with any attempts to obtain further public funding for the second phase.
- The Stewardship arrangements could not realistically be more detailed at this stage.

Additional Commercial and Negotiation Advice

3.39 Gerald Eve was commissioned by the Councils to prepare additional advice in respect of the approach to future negotiations with developers and mechanisms to achieve the overall policy and infrastructure requirements set out in the DPD and supporting documents.

3.40 Gerald Eve was also asked to consider the additional paragraphs in the CCC Full Council motion on 23rd March 2023 (as reproduced above) and further material which set out additional context to the issues and matters that related to it.

3.41 The advice is confidential to the Councils and is not being prepared as part of the Council's evidence base relating to the DPD. Officers have however shared a note which sets out initial findings and advice from Gerald Eve with all Members of CCC as this information was relevant to the additional paragraphs added to the motion debated and agreed at Full Council. This note is included at Appendix A of this Topic Paper. The main advice and findings included:

- Gerald Eve did not recommend at this stage in the process attempting to fix an approach to a 'Phase 1' of the Garden Community, without more detailed scheme design and phasing information being provided by the Master Developer.

- Gerald Eve considered that it would be prudent to undertake additional viability testing alongside the forthcoming pre-application discussions with the developer, including additional scenario testing.
- A ‘Master Developer’ approach was considered by Gerald Eve as being a standard and the most appropriate approach deployed for comparable long term and large-scale projects.
- It was noted that the developers will also be delivering some of the housing themselves and therefore generating profit from the scheme on an ongoing basis (i.e. roles as both master developer and as plot developer). The additional ‘housebuilder’ profit allowance is considered to be a material consideration to the viability analysis, because it lessens the emphasis on the master-developer return.
- Gerald Eve recommended (based on experience from other sites) that a single overarching planning application and S106 agreement was a suitable approach to implement across the scheme. They noted that problems can occur if separate phases are dealt with individually as certain policy requirements and other responsibilities may ‘slip between the cracks.
- At this stage of scheme evolution, Gerald Eve considered that it was advantageous that the majority of the land was under the control a single strategic developer. The type of organisation involved (Latimer as part of Clarion Housing Group, the UK’s largest housing association) is considered to be more equipped than others to deliver this kind of long-term strategic project. Many comparable schemes did not benefit from this favorable position. Other issues relating to the control of land were considered capable of being overcome over time.
- Gerald Eve acknowledged that there can be no guarantee that the current promoters will remain involved in any event. In that respect Gerald Eve considered that the project, whilst large and complex, was not considered to be sufficiently ‘abnormal’ to raise concern over its deliverability by the wider market. Discussions with Clarion/ Latimer have repeatedly reaffirmed their commitment to delivering this scheme, with considerable work underway on working up proposals via an agreed Planning Performance Agreement.
- Gerald Eve considered that further discussions with the developers can occur to agree key principles as part of preparing a ‘Statement of Common Ground’ in relation to the DPD and its evidence base, and as part of the pre-application process and approach to S106 'Heads of Terms’ with respect to future planning applications.

Consultation on the DPD Submission version (Regulation 19)

3.42 Based upon the work undertaken, including the findings from the additional advice sought from IPE and Gerald Eve, the Councils proceeded to consultation on the Submission Version Plan.

3.43 Public consultation took place on the Submission Version Plan for the Garden Community in line with Regulation 19 of the statutory plan-making process. The consultation period lasted six weeks from 15th May 2023 to the 25th June 2023. In total, the Councils received 276 representations from 88 respondents.

3.44 The most relevant policy in relation to viability and deliverability is Policy 9 – Infrastructure Delivery and Impact Mitigation. This received 9 representations. Of these, a small number of representations make direct comment on the viability of the proposals. Specific reference in the response to Policy 9 to the viability evidence is provided (as part of the representations and/or accompanying documents) by two individuals, 1 Town Council and 1 Parish Council.

- Representation 101 (individual).
- Representation 196 (individual)
- Representation 247 (local Town Council)
- Representation 187 (local Parish Council)

3.45 A number of other representations do not explicitly reference viability as a concern but do question the ability of the scheme to deliver across a range of policies and requirements, in particular infrastructure.

3.46 Issues of particular relevance raised included:

- Concerns are raised about the viability of the Garden Community and whether the full package of infrastructure would be provided.
- Concerns with the amended position with the 'A120-A133 Link Road' with questions over the road's overall funding and timing of construction.
- Concern over a lack of land ownership or control from the Councils and lack of formal agreements with the landowners to deliver all the identified infrastructure requirements and to secure 'land value capture'.
- Concern over the long-term nature of the viability evidence and that the site should be considered by a phased approach – including definition of a 'Phase 1' with a need for an associated Phase 1 viability appraisal.
- A lack of a definition of infrastructure; definition considered too vague.
- Suggested amendments to the references to future requirements for viability assessment, the use of S106 and the potential need/role of the Community Infrastructure Levy.

3.47 The master developer (Latimer) have not challenged the viability of the scheme and in their overall representation on the DPD they state that they "*agree with the conclusions of the Council's viability analysis*" (Latimer representation para 1.28). They do also note however that the approach to certain topics and measures (such as the range of transport mitigation measures as proposed), will be subject to further discussion and analysis, and

that any proposed costs / contributions will ultimately need to be fully justified in accordance with the relevant legislation and proportionate to the scheme.

3.48 Latimer have suggested amendments to the DPD policy wording to remove reference to the Community Infrastructure Levy (paras 10.3 & 10.4) as they consider S106 to be the most appropriate mechanism for strategic sites of this scale, Latimer also question whether a future viability assessment should be required with future applications, if the parties are in agreement regarding developer contributions.

Statement of Common Ground – Latimer & the Councils

3.49 A Statement of Common Ground has been agreed between Latimer and the Councils.

3.50 This covers a wide range of matters. It includes a section on viability and sets out the following key principles and assumptions as being agreed between the parties (paras 3.28-3.34).

- The overall viability methodology reflects a 'Master Developer' approach, with this being reflective of Latimer's role.
- The overarching conclusions of the Gerald Eve analysis, with the development considered to be viable, showing acceptable Master Developer returns.
- That the primary source for funding infrastructure will be from the developers and landowners of the Garden Community through legal agreements accompanying the grant of planning permission. Such developer contributions are to be secured through the use of Section 106 Agreements (and S38 or S278 agreements for highways works) to provide infrastructure related to specific proposals.
- That all S106 obligations and contributions, including their timings, must be lawful and in accordance with the S106 legislation and evidence.
- The approach of one overarching and comprehensive outline planning application with a related, comprehensive S106 agreement to cover an appropriate land area to be delivered by the developers (acting as Master Developer).
- That the Benchmark Land Value adopted by Gerald Eve is at the acceptable upper level per gross acre as considered by the Section 1 Inspector, and accords with national policy and the PPG viability guidance.
- The proposed dwellings per annum (although these will be subject to market conditions).

4 Summary of Current Position

The Councils' Position

4.1 Proposals for the Tendring Colchester Borders Garden Community were found sound and deliverable in December 2020 by an independent Planning Inspector, following detailed scrutiny of a wide range of evidence base material related to infrastructure and viability – as part of the Section 1 Local Plan examination process.

4.2 To support the DPD, the Councils have assembled additional evidence from independent viability experts Gerald Eve. This was published in February 2023 and also considers that a policy compliant scheme was viable. This updated work has included consideration of increased local residential values (since COVID and the previous analysis) and more recent increases in construction costs (including the change in circumstances relating to the A120-A133 Link Road).

4.3 The scheme has therefore been assessed and found viable at several points in time over recent years, in differing economic and market conditions.

4.4 Since the preparation of the evidence base, the Councils have commissioned additional work to consider the robustness of the position.

4.5 Intelligent Plans & Examinations were commissioned to undertake an independent peer review and consider that the work undertaken to date is relevant and proportionate, and that the evidence on viability showed that the proposed Garden Community was, on present evidence, considered to be a viable proposition.

4.6 Gerald Eve was commissioned to provide further advice on the overall approach to achieve Council policy aims. Gerald Eve consider that the scheme is viable / deliverable, the nature of the master developer is a benefit (by having a large part of the site under their control, and by them being a long term investor in communities and places), and that a site wide approach to consider viability and secure obligations through a Section 106 agreement is appropriate. Gerald Eve also recognise that viability testing should continue into the future, to reflect more detailed proposals as they emerge and changing property market conditions.

4.7 Several representations on the Submission Version DPD reference viability matters. Others do not explicitly reference viability but do identify related concerns about the delivery of appropriate infrastructure and wider policy requirements set out in the DPD. The Councils consider this Topic Paper and the wider associated evidence base work addresses these representations.

Latimer (Tendring Colchester Borders Garden Community) Ltd's Position

4.8 Representations on the Submission Version DPD by the lead developers – Latimer (Tendring Colchester Borders Garden Community) Ltd state that they agree with the conclusions of the Councils' viability evidence, that the scheme is both viable and deliverable.

4.9 Latimer have entered into a 'Memorandum of Understanding' specific to the position on funding of the A120-A133 Link Road.

4.10 The 'Statement of Common Ground' between Latimer and the Council confirms various key viability principles. The methodology adopted by Gerald Eve to assess viability reflecting a 'Master Developer' approach is agreed between the parties and is considered to be reflective of Latimer's role in delivering the Garden Community.

4.11 Latimer also agree with the overarching conclusions of the Gerald Eve analysis, with the development considered to be viable, and demonstrating reasonable Master Developer returns. Latimer also agree with the need for a comprehensive site wide approach including an outline planning application and associated S106 agreement for the whole area under their control.

4.12 Latimer are in the process of evolving proposals for the scheme that can form the basis of planning applications to be submitted towards the middle of 2024. This is being undertaken with structured engagement with the Councils via an agreed Planning Performance Agreement.

Addressing current market conditions

4.13 It is evident that economic and property market conditions are and will continue to be subject to change and uncertainty, not least due to ongoing situations in Europe and more recently the Middle East.

4.14 Issues and impacts can arise quickly and cannot be predicted. The Garden Community will be subject to various market cycles over its full delivery timescale.

4.15 The Councils consider that it is not appropriate or proportionate at this stage to undertake additional and/or more detailed viability work beyond that recently undertaken by Gerald Eve.

4.16 There are no known viability concerns being raised by the master developer. However, if circumstances were to arise (for example due to significant and enduring changes in market conditions), the Councils recognise that further viability testing may very well be appropriate over time. The Councils consider that this would be appropriate in light of the following considerations:

- When more detailed proposals are known as set out by the lead developers through work to prepare and submit planning applications. This would enable real world testing of proposals as opposed to continuing to assess the Councils illustrative background evidence base work.
- After the examination of the DPD and any modifications to policies/requirements, for example should there be additional flexibility or precision added to or removed from the policies as currently set out.
- If there is any significant change in terms of the lead developer and/or their current strategy to plan and deliver the scheme comprehensively.

- As part of the consideration of securing developer contributions to address policy and infrastructure requirements and securing the details in associated S106 agreements and negotiations.
- As part of a wider process to review viability throughout the lifetime of the scheme to recognise the long-term nature of the proposals, and that should any aspects not be considered viable under current conditions, that a suitable mechanism is agreed to enable their delivery over time should viability improve
- In accordance with requirements of the Housing Infrastructure Fund, in relation to the potential recovery and recycling of this funding.

Appendix A – Colchester City Council All Member Briefing Note, 9th May 2023

Tendring Colchester Borders Garden Community - Submission Version of the Development Plan Document (Regulation 19)

All Member Briefing Note – post Colchester Full Council decision 23rd March 2023

This briefing note has been prepared to provide an update to All Members on the work that Officers have been undertaking in response to the Colchester Full Council decision on 23rd March 2023 to consider whether to proceed with the above Development Plan Document to consultation.

As Members are aware, the motion was approved and adopted (thirty five voted for, two voted against and two abstained from voting) and included the following additional paragraphs:

> This Council:
>
> (1) will seek to work in collaboration with Tendring District Council and Essex County Council to agree a further Memorandum of Understanding with Latimer in relation to the delivery of infrastructure across the whole development with a focus on phase 1, ideally before the consultation period starts. This is intended to agree an open book appraisal methodology, acknowledge a phase 1 appraisal to be prepared and agree the principles for delivery of all infrastructure. The Council will also request the appointment of an independent consultant to commence initial negotiations in respect of draft heads of terms for any future S106 agreement.
>
> (2) expresses its strong concerns about the risk of congestion should phase 2 of the A120/A133 Link Road be delayed.

Further work has been advanced in 2 key areas in relation to the above approved motion:

- An independent peer review of the Development Plan Document has been undertaken to assess its appropriateness to move forward to consultation and examination.
- The commissioning of property and viability experts to take forward consideration of the appropriate approach (in planning and commercial terms) with respect to phasing, viability assessment and negotiating with the site developers (and other stakeholders) to secure policy and infrastructure objectives.

Independent Peer Review of the Development Plan Document

Intelligent Plans & Examination (IPE) were commissioned to provide an independent peer review of the Development Plan Document (DPD) to consider the appropriateness to move forward to consultation and examination. Particular advice was sought in relation to:

- the delivery of the A120 – A133 Link Road (the Link Road);
- the stewardship arrangements; and
- the viability of the developer's commitment to the development.

IPE are an independent specialist consultancy who advise Councils on the approach to Local Plans and other planning matters. They are staffed by individuals who were previously part of the Senior Management Team in the Planning Inspectorate (PINS). The review was undertaken by Keith Holland (BA (Hons) DipTP MRTPI ARICS) who had specific responsibility for Development Plans, Community Infrastructure Levy examinations and advising Government on national planning policy and guidance.

The full report is appended at Appendix A, and the summary conclusions from IPE are set out below:

- *The DPD is a comprehensive and clear document. Based on an initial assessment, and without the benefit of seeing challenges to the DPD, it is considered that in general the evidence base provides a robust basis for defending the DPD at examination.*
- *Having regard to what the DPD examination is likely to be focussed on, the evidence base that has been produced is relevant and proportionate. The evidence provides a solid basis for proceeding to consult on the DPD and thereafter submitting it for examination.*
- *The GE FVE [Gerald Eve Financial Viability Evidence] shows that the proposed Garden Community is, on present evidence, a viable proposition.*
- *The available evidence indicates that the local authorities can rely on the MD [Master Developer] to proceed as agreed and this confidence is reinforced by the recent MOU.*
- *Although the funding of the Link Road is not yet completely resolved, this need not delay the progress of the DPD. Progressing the DPD as quickly as possible would help with any attempts to obtain further public funding for the second phase of the Link Road*
- *The Stewardship arrangements that are emerging cannot realistically be more detailed at this stage.*

Source: Section 5 of the Tendring Colchester Borders Garden Community Development Plan Document, Review prior to Regulation 19 Consultation and Submission for Examination (March 2023)

Property & Viability Considerations

Gerald Eve LLP have been commissioned by the Councils to produce a Negotiation & Commercial Strategy Report to consider the delivery of the project in conjunction with the Master Developers, having regard to Garden Community principles and the overall policy and infrastructure requirements set out in the DPD and supporting documents.

The work is being led by James Brierley MA (Oxon) MRICS, a Partner in the Planning & Development Consultancy Department (London). Gerald Eve have considerable experience in supporting Councils and developers on viability, deliverability and infrastructure matters on comparable Garden Community schemes, notably ongoing work in Chelmsford (6,500 homes), and recent work on Otterpool Park (8,000 homes) which obtained planning permission in March 2023.

Gerald Eve have considered the additional paragraphs in the Motion and further material prepared by Councillor Sunnucks which set out further context to the issues and matters that relate to it. An initial draft response has been shared with Councillor Sunnucks and relevant Councillors will be involved in further discussions with Gerald Eve as they work up advice on the commercial approach.

The initial position and advice from Gerald Eve of particular relevance include:

- Exploring further or attempting to fix a phase one approach without more detailed scheme design and phasing information being provided by the Master Developer, is not recommended at this stage. Gerald Eve consider it would however be prudent to undertake additional viability testing alongside the forthcoming pre-application discussions with the developer. This material could also be made available for the Examination of the DPD if required by the Inspector.
- A 'Master Developer' approach is standard for comparable long term projects. For the TCBGC project it is noted that the developers will also be delivering some of the housing themselves and therefore extracting profit from the scheme on an ongoing basis.
- Based on Gerald Eve's experience from other sites, it is recommended that a single overarching planning application and S106 agreement is implemented across the scheme. Problems can occur if separate phases are dealt with individually as certain policy requirements and other responsibilities may 'slip between the cracks'.
- Many comparable schemes do not benefit from a single strategic developer with the amount of land under their control at this stage of scheme evolution. The type of organisation involved (Latimer as part of Clarion Housing Group) is considered to be more equipped than others to deliver this kind of long-term strategic project.
- There can be no guarantee that the current promoters will remain involved in any event. In that respect Gerald Eve consider that TCBGC, whilst complex, is not sufficiently 'abnormal' to raise concern over its deliverability by the market.
- Issues relating to control of land are considered capable of being overcome over time.
- Further discussions with the developers can occur to agree key principles as part of preparing a 'Statement of Common Ground' in relation to the DPD and its evidence base, and as part of the approach to S106 'Heads of Terms' with respect to future planning applications.

This response from Gerald Eve has been provided as a draft interim response, with the aim of providing an initial opinion on the matters raised via the approved Full Council Motion. Further consultation will be undertaken and ongoing matters will be fully addressed as part of the wider strategy process.

Approach to DPD Consultation

The first additional paragraph in the Motion suggested that ideally work would be undertaken prior to consultation commencing. Given the independent and professional advice that has been provided to the Councils and summarised in this note, Officers do not consider it necessary or appropriate to delay the forthcoming consultation, and that the matters raised can be considered and addressed over subsequent stages of the planning and delivery process.

END