HS9.3

Hearing Statement- Main Matter 9 – Infrastructure, Delivery, Impact and Monitoring

Tendring Colchester Borders Garden Community Development Plan Document (DPD)

Wivenhoe Town Council

23.160

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1. Introduction

1.1 Cerda are instructed on behalf of Wivenhoe Town Council to act on its behalf in respect of the Examination into the Tendring Colchester Borders Garden Community DPD.

1.2 The Town Council are a key stakeholder and provided representations to the Regulation 19 consultation, making strong objections to the plan.

1.3 This document has been prepared in response to the Planning Inspectors invitation to provide further statements on the soundness of the plan and other elements of the plan ahead of the Examination in Public which starts on May 7th.

2. Matter 9 Questions and Responses

2.1 ***Question 1*** *– Are the requirements of the Policy justified by appropriate available evidence, having regard to national guidance, and local context?*

The evidence is lacking in the understanding of the SANG requirements and full funding of the RTS. This chapter makes suggestion for how secure:

- Financial contributions towards new or expanded facilities and the maintenance thereof.
- On-site provision of new facilities (which may include building works).
- Off-site capacity improvement works.
- The provision of land.

For all of these matters with respect to the SANG and the link road each could be unachievable and there is insufficient evidence to prove they are deliverable or viable and do not amount to a effective plan likely to be found unsound.

2.2 ***Question 2*** *– Does the Policy provide clear direction as to how a decision maker should react to a development proposal?*

The Policy lacks clear direction and requires a substantial rewrite to meet its compliance obligations as directed by Section 1.

Part 1 – DPD's are not aligned to Section 1

Section 1 Inspectors letter of 10 December 2020 states '94. Because of the central importance of transport infrastructure to the sustainability of the GC, MM11 and MM33 also make it clear that planning permission for development will not be granted until planning consent and funding approval have been secured for the new A120-A133 link road and the rapid transit system serving the GC, and that sustainable transport measures will be provided from first occupation of the GC.'

Section 1 adopted plan is specific on many aspects of the infrastructure delivery and must be referenced within the DPD. As the DPD language is generally less robust and could be considered contradictory to section 1. It is essential that the vagueness of DPD policy is addressed with reference to section 1 given its position as the master policy. Additionally, a legally binding tie to the Infrastructure Delivery, Phasing and Funding Plan (IDPFP) is also essential to ensure all infrastructure delivery and funding is clear. This informs the S106 (or other) negotiations which must align with the infrastructure first principle.

Section 1 states – 'A Development Plan Document (DPD) will be prepared for the GC containing policies setting out how the new community will be designed, developed and delivered in phases, in accordance with the principles in paragraphs i-xiv below.'

'ii. (b) ensuring the timely delivery of both on-site and off-site infrastructure required to address the impact of the new community' and 'avoid a piecemeal approach to development, provide the funding and phasing of both development and infrastructure, and be sustainable and accountable in the long term.'

'iv. Sequencing of development and infrastructure provision (both on-site and off-site) to ensure that the latter is provided ahead of or in tandem with the development it supports to address

the impacts of the new garden community, meet the needs of its residents and establish sustainable travel patterns.'

'vii. Plan the new community around a step change in integrated and sustainable transport systems for the North Essex area.'

Part 2 – DPD fails to safeguard critical Link Road.

A Colchester Transport Model was used to inform previous work on Local Plans and their Infrastructure Delivery Plans (IDP's) identified junctions and links that were overcapacity pre-plan and would further suffer as a result of proposed development. However, work needed to mitigate traffic increases on the A133 specifically at Greenstead roundabout have still not been costed or adequately planned.

Part 3 – DPD does not provide a clear framework for decision making on critical infrastructure

Further investigation is still required to resolve known waste-water issues and sewerage constraints with identified capacity improvements being required.

Although financial provision for health is accounted for in the viability plan what is expected to materialise is demonstrably unclear so decision makers will not be able to confidently determine if future planning applications are policy compliant or not.

The plan is not therefore, positively prepared, justified, effect or consistent with National Policy and is unsound.

2.3 ***Question 3*** *– Will the Council's monitoring and review processes for the DPD be effective in assessing the success or failure of delivery and what alternatives might reasonably be provided if necessary?*

The monitoring and review process does not set **ANY** threshold that would trigger either; a postponement in building; or condition any retrospective mitigation measures necessary to meet the aspirations of the plan. This is acutely apparent with modal shift where the targets are set unrealistically high. This is then used to skew the transport modelling that sets the parameters for housebuilding in relation to the RTS and link road. In other words, they post- rationalise unevidenced concepts that are unachievable in the knowledge there are no consequences if they fail. This inherent policy weakness is self-prophesising as it is bound to fail without policy incentivisation. To be blunt the policy is not effective.

This issue is easy to remedy. Using the above example of modal shift GC policy 9 should include what would happen if the model shift targets were not achieved. For instance, suspend building on site at 1000 units until mitigating measures successfully meet the modal target. It is critical that the DPD's are robust to prevent poor quality development. We assert that the application of a mechanism that links number of dwellings to infrastructure delivery is essential.

The following elements from Section 1 must be weaved into the DPD to guarantee security of delivery: -

- *'9 Delivery, Implementation & Monitoring 9.1 - the authorities intend to have a significant role in* how *the community is phased and delivered and to ensure that the infrastructure and other supporting measures to support the residents of the new community are delivered in advance of or at the same time as new homes. This should also help ensure delivery throughout different economic cycles.'*

- *'9.2 - It should be noted that where there is an unacceptable delay in delivery of development and/or infrastructure occurs, the local authorities will use mechanisms and powers including establishing locally led Development Corporations and the use of Compulsory Purchase Orders, to intervene.'*

- *'9.3 Monitoring Requirements for Section 1 - Monitoring of Section 1 objectives and outcomes as outlined in the table below will be assessed regularly by the authorities in their annual Authority Monitoring Reports.'*

- *'Section 1 - Objectives Ensuring high quality outcomes - Key Indicators in Authority Monitoring Reports Local authority agreement and delivery of*

governance, community involvement, stewardship arrangements and funding arrangements for the new Garden Community'

We accept this is not an exhaustive list of elements requiring a mechanism to align delivery with dwellings delivered but hope this demonstrates the scale of redrafting necessary.

The Section 1 hearing process ruled out the West Tey GC because it was not viable. However, TBGC passed a viability test that it would fail in today's financial climate. Viability should be the chief concern of any decision maker and the DPD makes no provision for it. It is an oversight to believe that a decision maker would not place financial considerations at the heart of their judgement. A cost estimate for Phase 2 of the link road is urgently needed if any future decision maker is to be sufficiently well equipped with robust policy.

List of viability concerns that the DPD needs to address for future decision makers

- ECC's outdated shortfall figures for the link road - If Phase 2 were costed at 2024 values *the* shortfall would comfortably exceed the £21.5m.

- There *will* be no residual contribution from HIF – As money has to be returned to government or spent by 2026 and the start date for Phase 2 until later unspecified date.

- A split-level junction is a condition of Highways England for the junction with the A120. The viability assessment is unreliable because it doesn't include a reasonable estimate.

- Further uncosted off-site mitigation – for instance Greenstead roundabout requires enhancement that is neither costed nor adequately phased.

- S106 - The Infrastructure Delivery, Phasing and Funding Plan (IDPFP) states £480m will be needed to be funded by developer contributions. This outdated figure is at least £100m short. More reliable estimates are needed to negotiate s106 agreements with the developer to ensure the infrastructure arrives when expected. We do not understand how a decision maker can determine s106 values now for half a road in 20 years' time? To compound s106 issues, Latimer have so far produced no viability evidence of their own and are likely to use viability arguments at s106 stage. If Phase 2 is not in the viability appraisals at the correct value, s106 will not capture it.

- Clear discrepancies around build rate - The IDPFP places the entire link road in phase 1 (1750 dwellings). The number of homes due in the plan period (up till 2033) is up to 2500 homes (also true for the RTS however this would require the works to Greenstead roundabout as a key bottle neck to also be completed by then and it is neither costed or phased). In ECC Statement of Case for the CPO public enquiry they refer to the Phase 1 of the link road as the "Proposed Scheme", and in that Statement of Case they say, at (3.12.) :-

the - *'timing of the second phase would be determined by the needs of the GC and funding and delivery obligations are to be secured through the determination of future planning applications for the Garden Community and associated planning conditions and Section 106 legal agreements.'*

- An understanding of the visitor impacts of RAMSAR sites in relation to this DPD so that a *scheme* of mitigation can be devised, that such a scheme might be viable and that as necessary there might be suitable land available for acquisition.

In relation to the highway infrastructure costs we cannot be confidence that the link road will be completed in the plan period (by 2033) but nowhere has it been stated when it will be built. Section 1 set the build out rate at 250dpa, but we note that the DPD fails to guide the decision maker as to what trigger must be used in housing number built, or any other timescale.

In conclusion, the plan relies on outdated viability and does not have all of the evidence to conclude on costs to determine viability. Current interest rates and continued increase in skilled labour and material costs sit alongside the long-term changes to the market and general economy created by Brexit and covid. These need to be taken into consideration. The current financial climate, the lack of realistic contingencies for major infrastructure elements and lack of external funding opportunities mean it is wrong to believe that the section 1 Inspector would conclude it was viable today.

Other factors

- An *allowance* will be needed for the extra overhead, fees and other costs caused by splitting the build into two phases creating an adverse economy of scale.

- A Phase 1 appraisal is needed to give confidence that a developer can commit to the necessary infrastructure delivery required in the timescale of the plan period.

- The viability evidence suggests an IRR of 9.8%, which is unjustifiable as several facets, *notably* the Link Rd and RTS do not even offer a contingency! The revised more appropriate figure would be 3.11%

- An IRR, or rate of profit of 3.11%, at a time of increasing base rates in tandem with all the other fault lines requires urgent attention. Contingencies do not cover for legal *challenges*. The compound cost of borrowing for the inevitable delays given the site constraints, inappropriate scale of the master builder and potential for borrowing costs to continue to increase in a post quantitative easing paradigm are not included in contingencies.

- The road and associated transport contingent should be 40% as an industry standard *minimum*. The advice from the Section 1 Inspectors on contingency has been ignored, and they remain woefully inadequate.

- An up- to- date figure to build phase 2 of the link road needs to be included. We would *remind* the Inspector that this scheme was only found sound at Section 1 because it was claimed the link road and RTS were fully funded. Without these elements the GC principles are broken.

In addition to these concerns that the DPD needs to address for future decision makers the following:-

- The *Internal* rate of return is calculated at 9.6%. The industry range is 10-12%.

- Latimer do not have the financial resources to go it alone on this project and will have *to* borrow from their parent company. The correct interest rate this incurs has not been added.

- Land prices for the university sports park are set at cost neutral. (£100,000 per acre). *However*, the developer has not confirmed they are prepared to 'gift' this land in such a way. So do we see why the university, that is run as a business, will not charge non- students to use their facilities and so shouldn't be afforded such a favourable deal. Additionally, as the councils do not own the land, they are not in a position to negotiate with Latimer or the landowner on behalf of the university.

- An initial cross referencing of the Prior and Partners master planning breakdown of the developable area and those values included in the viability work do not tally. These *discrepancies* are difficult to identify as there is not an adequate map with areas and associated use to reference.

Or a table that make the comparison directly. However, we believe that there is land that will have to be brought that does not feature in these costs and would ask the Inspector to clarify this for us.

- The sell on price for plot prices are too high. There is no comparable to justify this *inflated* figure.

Land values are based on landowner selling up front and that is *not* going to happen due to tax and inheritance liabilities. If the predominant landowner sold now this would soak up what he sees as *his* hope value. The landowner will control the pace of development, and this does not favour the decision maker.