Tendring Colchester Borders Garden Community EIP

Response to the Inspector's Questions
From Cllr. William Sunnucks

19 April 2024

Introduction

I support the Garden Community as a concept, but believe that the DPD requires significant amendment if it is to deliver the intended benefits.

I am in a good position to comment following a long career in property and finance[1]. I have been tracking the garden community proposals since 2015 and played an active role in both the 2018 and 2020 Examinations of the Section 1 plan. My comments were taken seriously by Inspector Roger Clews whose two reports echoed closely my own conclusions.

My answers below will show why stronger financial and phasing controls are needed if the community is to be assured of the promised benefits. More detail is provided in the four appendices in my personal Dropbox[2], and even more detail in my Reg19 response[3]

Appendix 1 – Link Road Delivery (Matter 7)
Appendix 2 – Viability (Matter 7 & 9)
Appendix 3 – Colchester's resolutions explained (Matters 1,7 and 9)
Appendix 4 – New Towns – the track record (Matter 9)

Main matter 9 - Infrastructure Delivery, Impact Mitigation and Monitoring

1. Are the requirements of the Policy justified by appropriate available evidence?

1.0 Viability

1.1 The Viability Planning Policy Guidance[4] requires that viability to be properly addressed at plan making stage. The three pieces of evidence presented to support the DPD (TP2, EB24 and EB25) fall short and leave the Councils at risk of being forced to concede significant sums of public money in secretive s106 negotiations. The Councils won't have the resource to deal with the complexity and are likely to be seriously out-gunned by the developers for whom it will be a major focus.

[1] I have recently become a substitute member of the Joint Committee formed by the three Councils – not a proper member. I have an investment in a company which owns a small business in Elmstead Market. I don't regard either as a conflict.
[2] https://www.dropbox.com/scl/fo/1iki52h3vlzj37qxz449w/AEdggNEeiLm-jLulFUnvjms?rlkey=9ratbb3x97y26ge5gnylthpox&dl=0 .
[3] https://www.dropbox.com/sh/skhjwuf7iswy8ej/AAA-lhfL-Wa67zIw_wbRQHu-a?dl=0
[4] https://www.gov.uk/guidance/viability

1.2 The viability topic paper (TP2) makes much of the 2020 Inspector's conclusion that viability was "very strong", a reasonable conclusion at the time. But the world has changed since then, largely due to COVID:

- There has been a sharp increase in build costs
- Increased interest rates have made mortgages less affordable.
- House prices have flatlined during a period of high inflation
- Developers are having to bear higher interest costs. Latimer will be paying up to 10%[5] for long term development finance from its parent, significantly more than the 7.5% assumed in the appraisal
- There has been a contraction in housebuilders' appetite for plots and the price they will pay. The viability conclusion relies fundamentally on the assumption that housebuilders will pay the master developer £104,000 per serviced plot[6] a figure that looks high in current market conditions.

1.3 Gerald Eve's April 2023 report (EB24) concludes that the garden community is "capable of becoming viable", not that it is viable. Even that lukewarm conclusion is unsupported by their own evidence.

1.4 Two[7] of the three metrics on which the conclusion is based carry no weight because they rely on a faulty interest calculation – see the explanation in the note below and my appendix 2. Their interest charge is £37m below the Hyas[8] equivalent, which assumes (more realistically) that investor profit is paid out during the project rather than at the end.

1.5 The third metric, the internal rate of return or IRR, is a useful viability indicator which is not dependent on the faulty interest calculation. But Gerald Eve's IRR of 9.65% falls outside the required range of 10-14% (EB24 pages 9 and 47) and therefore doesn't support their conclusion.

1.6 Furthermore the 9.65% takes no account of the known increase in the cost of the phase 2 Link Road for which only £21.25m is allowed. Appendix 1 shows that this a small amount compared to other comparable split level junction schemes, and that inflation alone is likely to have increased cost by £19m. Other shortfalls are highlighted in Appendix 2.

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[5] Latimer's statutory accounts lodged at Companies House disclose that it borrows from its parent, Clarion, at SONIA + 5.5%. SONIA is the new LIBOR, a measure of the wholesale rates at which banks lend to each other. SONIA is currently 4.2% for a 10 year period rising to 4.6% for 20years (Source Chatham Financial). Thus my conclusion that total borrowing costs are around 10%.

[6] This figure is a blend between market plots (more valuable) and affordable plots (less valuable). The price per market plot is sometimes quoted rather than the blend. Care needed.

[7] The two metrics which should carry no weight are i) profit on GDV (or cost) and ii) residual land value per acre. Both rely on an interest calculation which is faulty due to the misuse of the industry standard Argus Developer software. The software implicitly assumes that investors receive no return until the end of the project, a reasonable assumption for a normal 5-10 year project, but quite unrealistic for a 35 year one. There is no market for finance with no return for 35 years, and the difference on a discounted basis is a large multiple. The developer will be able to demonstrate this at s106 stage.

[8] Hyas prepared the viability appraisals which supported the Inspector's 2020 conclusions.

1.7 The IPE Review at EB25 describes viability as critically important (para 3.9). It concludes that there will be a 15% profit on cost, thus falling into exactly the same trap as Gerald Eve - 15% is a highly misleading metric[9] over 35 years. The report doesn't even mention the IRR which falls outside the acceptable range. The writer appears to be unaware of the further cost over-runs on the Link Road and the other points raised in appendix 2.

1.8 Conclusion: the Evidence Base doesn't currently support the viability conclusions over the either the long or short term. During s106 negotiations the developer will be able to demonstrate that appraisal is around £100m short[10] and that some of the policies in the plan will have to be relaxed. It is vital that these problems are addressed now rather than postponed.

2. Will the Councils' 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

2.1 I have several comments on the Council's monitoring and review process. I have first-hand experience of controlling developers on two large schemes and I'm concerned by the Councils' tendency to postpone addressing the issues.

Phase 1 appraisal:

2.2 The viability conclusions are based solely on a 35 year model with no breakdown into manageable phases which can realistically be financed and controlled.

2.3 The absence of a phase 1 appraisal leaves the Councils wide open to a viability argument which will postpone infrastructure investment to Colchester's particular detriment. The developer will be able to demonstrate that there is no "market" in 35 year new town projects, that most have failed and that a 35 year scheme is unfinanceable[11]. As at Welbourne the developer will ask for smaller fundable phases which postpone significant infrastructure items and the Councils will be forced to agree.

Colchester's Resolutions:

2.4 A phase 1 appraisal was requested in a formal Resolution from Colchester City Council on 23rd march. The reasons were fully explained to officers in a note shown at

[9] 15% profit is misleading because it is postponed for 35 years. Discounting it at 7.5% for 35 years would reduce it to 1.2%.

[10] In other words the amount of infrastructure provision will need to be cut back by £100m, or other steps taken to bridge the viability gap.

[11] See appendix 3 at https://www.dropbox.com/scl/fi/wd019fkblp8yx0na8mhou/Appendix-3-Colchester-s-resolution-explained.docx?rlkey=s3h4i1l61tz0jaqqaymxwbbcm&dl=0

appendix 3, but they elected instead to follow advice from Gerald Eve with which I disagree.

2.5 Gerald Eve argued that a 35-year appraisal follows market practice for new towns, ignoring the fact that few if any have actually been built since Milton Keynes: and that those in progress are all phased. They appear to be conflating the market for advice on new towns with a market for actually building them. They show no awareness of the difficulties of raising 35 year development funding, or of the challenges of retaining financial control over such a long period.

2.6 The Councils correctly point out that s106 cannot be agreed at plan making stage, but this is not what was requested. We need to look at ways of breaking a huge project into deliverable pieces in a way that allows the Councils to retain some control. This approach needs to be entrenched at plan making stage, not postponed until an application is received.

Financial status of Latimer Developments Limited (the developer)

2.7 Although the developer is part of the huge Clarion Housing group, in legal terms it is a limited liability company with net assets of just £48m, much too small to underwrite a 35 year project with cash infrastructure commitments of £300m or more. This is why we need viability evidence broken into financeable phases of no more than 10 years each.

Strengthening the DPD

2.8 The Inspector may wish to consider a number of measures to strengthen the DPD

i IDPFP[12]: Policy GC9 should require any planning application[13] to be supported by a draft s106 agreement which includes all the infrastructure listed in the relevant phase of the Infrastructure Delivery, Phasing and Funding Plan.

ii Exclusions from the IDPFP list should be possible but would have to be fully justified either in terms of need or viability.

iii Flexibility: Latimer's many requests for "flexibility" should be dealt with similarly. The DPD is a plan, one way of doing things. Changes should be allowed or even encouraged: but evidence should be presented for the financial and social benefits at application stage.

iv Scope of s106: The evidence base should include evidence that all items in the IDPFP are sufficiently connected to TCBGC to be within the scope of s106[14]. Some of the transport items in the list below[15] are at risk of being

[12] Infrastructure Delivery Phasing and Funding Plan EB17

[13] We understand that the parties envisage only one planning application for the whole scheme

[14] Councils are only entitled to collect s106 money from developers if the infrastructure is necessary for the development. Offsite active travel measures and road improvements are at risk of being "scoped out" unless there is evidence that they are connected to the GC. For example what has a "city centre package" got to do with the garden community?

[15] This list comes from the IDPFP (EB17), and is largely reflected in the Gerald Eve appraisal. The £90.3m for the Link Road includes the £21.25m over-run which is assumed to be funded by the developer, but the actual over-run is likely to be much more.

scoped out in which case they should be excluded now, not as part of a later negotiation which would discredit the planning system and contravene the principles of the Viability PPG[16]:

Infrastructure	Requirement / Commentary	Cost	*Phase 1*	*Phase 2*	*Phase 3*	*Phase 4*
Transport		**£209.7m**	**£155.2m**	**£35.2m**	**£17.3m**	**£2.0m**
A133/East Colchester Package	Various measures to promote active travel, extension of the RTS across the Garden Community, traffic management and increased highways capacity.	29.3	*49%*	*27%*	*24%*	
Bromley Road package	Various measures to promote active travel and create a sustainable transport corridor along Bromley Road.	3.9		*27%*	*73%*	
University – Hythe package	Improvements to public transport facilities and active travel measures within Hythe area.	1.7		*100%*		
Ipswich Road package	Various measures to promote active travel, improve traffic management and increase highways capacity.	2.1	*100%*			
City Centre package	Various measures to promote active travel and improve traffic management within and on entry to the city centre from the Garden Community.	6.7	*31%*	*69%*		
Greenstead package	Various measures to promote active travel in the Greenstead area.	2.9	*57%*	*43%*		
Parsons Heath / Fox Street package	Various measures to promote active travel.	2.9	*71%*	*29%*		
Wivenhoe package	Various measures to promote active travel.	4.2	*100%*			
Elmstead Market package	Various measures to promote active travel.	1.7	*50%*	*50%*		
A120/A12 corridor	Contributions to improve traffic management at A12 Junction 29.	10		*100%*		
A120/A133 Link Rd	New dual carriageway link. Secured funding via the Housing Infrastructure Fund. Contributions to enable delivery of the Link Road (to supplement secured HIF monies).	90.3	*100%*			
RTS (off site)	Establishment of a Rapid Transit System linking the Garden Community into the Colchester urban area and key destinations. Funding Secured via the Housing Infrastructure Fund.	30.8	*100%*			
Public Transport (operations)	Contributions to provision of Rapid Transit vehicles and revenue funding to support services.	12	*33%*	*33%*	*34%*	
Travel planning	Various measures to support sustainable transport use.	£11.2m	*25%*	*27%*	*30%*	*18%*

v Phase 1 appraisal: the evidence base should include a phase 1 appraisal. Appendix 3[17] explains why one is needed and indicates how one might be made to work in practice. I suggest that without one the DPD would fall short of the deliverability requirements of the NPPF.

vi Community infrastructure levy: the DPD needs to clarify how the large sums needed for infrastructure (£300m +) will be collected from the developer(s). Will it be CIL or s106? How will the plan cope with the legislation changes which are likely over the 35 year period?

vii Health provision: the DPD needs more clarity around health provision. The present arrangements are too strategic and vague to hold public confidence.

viii HIF agreement: GC9 requires applicants to comply with the conditions of the Housing Infrastructure Fund which is a secret document[18]. The relevant terms need to be disclosed together with up-to-date costing information on the RTS and both phases of the link road. My Appendix 1[19] explains why a significant cost over-run is likely.

[16] The Viability Planning Policy Guidance advises that viability appraisals should be done at the plan making stage. It will be embarrassing if the Councils publish evidence promising infrastructure expenditure in the plan which is dropped later following developer pressure.

[17] https://www.dropbox.com/scl/fi/wd019fkblp8yx0na8mhou/Appendix-3-Colchester-s-resolution-explained.docx?rlkey=s3h4i1l61tz0jaqqaymxwbbcm&dl=0

[18] Homes England have refused a Freedom of Information request on the HIF agreement on grounds of commercial confidentiality

[19] https://www.dropbox.com/scl/fi/qy7sjzn0f0r1r0bu9yexk/Appendix-1-Link-Road-delivery.docx?rlkey=86bx2v2sbfez1w4ilhlekeojm&dl=0

Monitoring:

2.9 The DPD suggests that this 35 year project can be monitored through 15 worthy social objectives (page 132). Many will be difficult to measure in practice and responsibility will be hard to allocate: for example who is responsible if crime rates don't fall? And there can be no effective sanction if they are not achieved.

2.10 I suggest more tangible targets focussed mainly on practical infrastructure delivery in line with the IDPFP. If these are achieved the social objectives will follow.

2.11 Infrastructure monitoring can best be done by breaking the project into phases, as with every other new town development I can find. The Councils can retain some control by insisting that the promised infrastructure for each phase is delivered before the next phase is permissioned.

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William Sunnucks is a Chartered Accountant with a first degree in Economics and a Masters degree in Business Administration. His career took him overseas with Shell and then into a series of Finance Director roles in the UK. Over the last 20 years he has initiated and overseen two significant mixed use town centre developments in the Greater London area, working alongside professional developers with all their strengths and weaknesses.

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