

# *Tendring* *District Council*



**Independent Examination of Section 2 of the Tendring District  
Local Plan '2013-2033 and Beyond'**

**HEARING STATEMENT FROM THE LOCAL PLANNING  
AUTHORITY**

**Matter 1: Legal Compliance and Overarching Issues**

**January 2021**

## **Matter 1 – Legal Compliance and Overarching Issues**

*This matter focusses on matters which relate solely to the soundness of the policies within Section 2*

### **1.1 In preparing the Section 2 plan are there any cross-boundary issues which required the Council to engage effectively with neighbouring authorities and other relevant organisations which have not already been considered during the Section 1 Examination?**

#### Cross Boundary Issues

- 1.1.1 There are no cross-boundary issues with neighbouring authorities and other relevant organisations, which have not already been considered during the Section 1 Examination. However, the Council also recognises that cross-boundary cooperation is an ongoing matter and joint working remains a top priority for the Council – particularly in relation to the Tendring Colchester Borders Garden Community, the related Development Plan Document (DPD) and future reviews of the Local Plan.
- 1.1.2 The Council has developed a strong working relationship with Braintree and Colchester Councils (the North Essex Authorities) arising from the extensive cross-boundary work on the Section 1 Local Plan and also as relates to the progression of the three Section 2 Plans. It should also be noted that the North Essex Authorities published their Joint Section 1 and individual Section 2 Plans at the same time within a single document and thus the Section 1 Inspector's final conclusions on legal compliance and alignment with the duty to cooperate (see paragraphs 15 & 16 of [CD2.2](#)) are also relevant and applicable to Section 2.
- 1.1.3 The North Essex Authorities submitted separate Duty to Cooperate Statements ([SDBDC005](#), [SDCBC005](#) and [SDTDC022](#)) (see [CD4.2](#) for Tendring) alongside their Local Plans, which set out how the Duty to Co-operate had been met in production of each authority's Section 1 and 2 Submission Plans.
- 1.1.4 This co-operation has involved ongoing meetings, adoption of a memoranda of co-operation [Appendix 1](#), and joint evidence preparation. In his [post hearing letter](#) to the NEAs, 08<sup>th</sup> June 2018 (issued prior to his final report), the Section 1 Inspector also acknowledged that a number of cross-boundary strategic matters have been effectively addressed including assessments of need for housing, gypsy and traveller accommodation and employment land, strategic infrastructure, including improvements to the trunk and local road networks and the railway network, education, healthcare and broadband provision; and the environmental and other cross-boundary impacts of the Plan's proposals.
- 1.1.5 Tendring also shares a border with Babergh Mid-Suffolk District Council and the two authorities have worked in cooperation both plan-preparation and in the determination of planning applications close to the border – namely in Brantham, Lawford and Mistley where a s106 package to mitigate highways impacts on the A137 and Manningtree underpass/overpass was formulated between Essex and Suffolk County Councils and

the two district Councils. The Councils have also worked together more recently in preparation of a bid for Freeport status. Babergh Mid-Suffolk Council and Tendring District Council have agreed that there are no further cross-border strategic matters that require any specific changes to the Councils' respective Local Plans.

#### Objectively Assessed Housing Needs (OAHN)

- 1.1.6 The North Essex Authorities, have also worked with Chelmsford City Council towards a joint Objectively Assessed Housing Needs Assessment ([OAHN](#)) and Strategic Housing Market Assessment ([SHMA](#)). Chelmsford, in their Regulation 19 response ([LPPuD92](#)) to Section 1, stated that they *“are satisfied overall that the shared Section 1 of the three plans provides a coherent strategy for the future growth of the three areas and seeks to meet the identified objectively assessed development needs”*. Chelmsford also commented on the SA addendum ([CD5.3](#)) for Section 2 stating that the *“addendum does not alter Chelmsford City Council's response to the Regulation 19 consultation”* ([RR23](#)) and had no further comments to make on the Section 2 Plan.
- 1.1.7 Representations were also submitted on Section 2 by Colchester and Braintree Councils. Colchester supported the Section 2 Plan ([LPPuD93 & 94](#)) stating *“CBC supports the spatial strategy and spatial hierarchy in Section 2 of the Local Plan”, “The spatial hierarchy provides a logical sequential approach to the location of the new development in the most sustainable locations” and “The OAN target is 550 dwellings per year which has been matched in the plan with an appropriate level of allocations and is considered to be realistic and achievable”*.
- 1.1.8 Braintree ([LPPuD82](#)) states that the Section 2 Plan *“allocates the homes and jobs required for the plan period outside of the garden communities. It provides place shaping policies to guide development, to ensure the District's natural and built assets are enhanced and protected, communities are well connected and that design promotes healthy living, adaptability of homes and safety from flood risk. Whilst there are some alterations to Section 2 these do not raise issues on which Braintree District seeks to make comment. No comments are proposed in respect of Section 2”*.
- 1.1.9 Following the Examination in Public (EiP) for Section 1, the Objectively Assessed Housing Needs Assessment (OAHN) and corresponding housing figures, for Tendring District Council were found to be based on sound evidence, as confirmed in the [Planning Inspector's Final Report for Section 1](#), dated 10<sup>th</sup> December 2020).

#### Housing Infrastructure Fund (HIF)

- 1.1.10 Further evidence of the Councils cooperation is demonstrated in the successful Housing Infrastructure Fund ([HIF](#)) bid. The HIF award includes £99million for the A120/A133 Link Road and Rapid Transit System to facilitate the Tendring Colchester Borders Garden Community (TCBGC).

## Memorandum of Cooperation

- 1.1.11 Further details of ongoing cross boundary cooperation also include collaboration through the adoption of a Memorandum of Cooperation (MoC) as well as shared coastal mitigation policies and tariffs through the introduction of a shared Essex Coast Recreational Disturbance Avoidance & Mitigation Strategy (RAMS).
- 1.1.12 Joint working has led to an agreed 'Memorandum of Cooperation' between Braintree District Council, Chelmsford City Council, Colchester Borough Council, Tendring District Council and Essex County Council ([CD4.2](#), Appendix 1). Four (4) key objectives have been set out in the above MoC as follows:
- 1 to provide evidence on the Duty to Co-operate
  - 2 to identify major strategic issues
  - 3 to articulate the process and outcomes from the collaboration and
  - 4 to ensure the alignment of strategic investment priorities and work together on the funding for such projects.

## The Essex Coast Recreational Disturbance Avoidance & Mitigation Strategy

- 1.1.13 The published Habitats Regulations Assessments for Section 1 ([CD6.3](#)) and Section 2 ([CD6.1](#)) of the Council's Local Plans have also identified recreational disturbance as an issue for all of the Essex coastal habitats sites. To address these matters, all 12 of Essex' local planning authorities have worked in cooperation to develop the Essex Coast Recreational disturbance Avoidance Mitigation Strategy (RAMS) ([EB7.3.1](#)), as now referred to in Section 1 of the Local Plan following the Inspector's final modifications. Like other authorities in Essex, this Council has adopted a Supplementary Planning Document and entered into a partnership agreement which formalises the RAMS approach, which includes the collection and use of developer contributions to deliver mitigation measures around the county's internationally important wildlife sites.

## Cooperation with other bodies

- 1.1.14 As well as working with neighbouring authorities, the Council continues to work closely with the relevant statutory bodies including the Environmental Agency, Historic England and Natural England and are seeking to agree Statements of Common Ground where necessary. Furthermore, the Council has carefully considered the comments raised by such bodies in their representations and has generally agreed with suggested amendments put forward by such bodies aimed at improving the soundness of the plan.

**1.2 Has consultation on the Section 2 plan been carried out in accordance with the Council’s Statement of Community Involvement and the requirements of the 2004 Act (as amended) and the 2012 Regulations?**

- 1.2.1 The Council’s Statements of Community Involvement ([CD4.6](#)) explains how communities and stakeholders are involved in the production and review of the Local Plan (and also in the consideration of individual planning applications). In addition, Paragraph 4.2, of the Council’s Regulation 22 Consultation Statement Tendring District Council Statement of Consultation 2017 ([SDTDC\\_006](#)) confirms that the LPA has ensured that consultation has complied with the adopted Statement of Community Involvement (SCI) [CD4.6](#).
- 1.2.2 It is also important to note that in Paragraphs 17 to 25 of the Planning Inspector’s [Final Report](#) and post hearing letter ([IED011](#)), concluded that “*consultation on the Plan and the MMs was carried out in compliance with the NEAs Statement of Community Involvement*”. This conclusion is equally relevant to Section 1 and Section 2 of the Local Plan as they were the subject of consultation at the same time and as two parts of one document.
- 1.2.3 The Inspector’s final report also considered that each of the NEAs’ development plans, taken as a whole, include policies designed to secure that the development and use of land in the LPA’s area contribute to the mitigation of, and adaptation to, climate change and concluded that the Plan is in accordance with section 19(1A) of the 2004 Act. Also, at Paragraph 29, of the report the Inspector concludes that the Plan complies with all other relevant legal requirements, including those in the 2004 Act and the 2012 Regulations.

**1.3 Is the Section 2 Sustainability Appraisal (SA) adequate in terms of:**

- (i) its assessment of the likely effects of the plan’s policies and allocations,**
- (ii) its consideration of reasonable alternatives, and**
- (iii) its explanation of why the preferred strategy and policies were selected?**

*(This question focusses on the legal compliance of the SA. The implications of the SA for the soundness of individual plan policies is considered under other individual matters.)*

- 1.3.1 The Sustainability Appraisal for the Section 2 Local Plan [CD5.2](#) (see also documents [CD5.1](#) and [3](#)) does provide an adequate assessment of the plan’s policies, allocations and reasonable alternatives and explanation of the chosen approach. The purpose of Sustainability Appraisal (SA) is to identify the potential significant environmental, social and economic effects of different options to inform the decisions of the plan-making authority in determining the most appropriate strategy for growth through the Local Plan. SA is carried out a different stages of the plan-making process to inform the choices going forward and Chapter 3 of the SA explains how SA has been undertaken at these different stages.

1.3.2 The SA for the Section 2 Local Plan prepared by Essex Place Services assesses policies, proposals and alternatives against a series of core sustainability objectives consistent with those used in the SA, and the required additional SA work for the Section 1 Local Plan. These are:

1. To provide decent and affordable homes for all;
2. To ensure that development is located sustainably and makes efficient use of land;
3. Harness the District's economic strengths;
4. Minimise transport growth whilst capturing the economic benefits of international gateways;
5. To build stronger more resilient sustainable communities with better education and social outcomes;
6. Protect and enhance natural, historic and environmental assets;
7. Reduce contributions to climate change; and
8. To conserve and enhance natural resources and reduce climate change impacts.

1.3.3 Table 5 starting on page 46 of the SA [CD5.2](#) sets out the criteria for each of the sustainability objectives against which policies and proposals are assessed in order to identify potential significant environmental, social and economic effects. The SA assesses policies and proposals against the assessment criteria for the short, medium and long-term with the assessment tailored as appropriate to apply to either policies and/or site-specific allocations and any reasonable alternatives.

1.3.4 Chapter 5 of the SA goes through each of the policies in the plan and any reasonable alternatives and provides an assessment against the sustainability objectives and criteria. Chapter 6 of the SA considers the cumulative and synergistic impacts of the policies which generally shows positive performance against the sustainability objectives, except for certain policies where uncertain impacts might arise at a more site-specific level as schemes come forward and more detailed work is undertaken.

1.3.5 Section 6.9 of the SA includes commentary on the reason for selecting the sites allocated in the plan over reasonable alternatives including sites SAMU1-5; SAH1-3, SAE1-7 and MSA1-14. Appendix 2 of the SA contains the full appraisal of these allocated sites and other reasonable alternatives.

- 1.3.6 The Council's schedules of representations and responses includes, in document [RR23](#), the Council's consideration of the relatively small number representations made in 2017 to the Sustainability Appraisal and the subsequent addendum ([CD5.3](#)). Many of the comments received were related to either the promotion of specific alternative sites, objections to specific allocated sites or raising issues about the separate Habitat Regulations Assessment. None of the comments or objections raise matters that, in the Council's view, undermine the robustness of either the methodology or assessments detailed within the SA, as presented in 2017.
- 1.3.7 That said, the Inspector will note that circumstances have changed considerably in the period of time that has elapsed since 2017. For example, the appraisal of alternative sites was based, in part, on information that emerged through the Council's previous 'call for sites' efforts and information otherwise submitted in representations or in relation to specific planning applications. Many of the alternative sites have now progressed through the Development Management process or through Regulation 19 representations and more up to date information is known about them. Some of the names of sites and their dwelling capacities will have now changed and many have either been developed, granted or refused planning permission or otherwise allowed or dismissed on appeal. This is particularly the case for housing development proposals. The Council's Housing Topic Paper [TP2](#) provides more up to date information on the status of sites that are the subject of representations.
- 1.3.8 The Council is now suggesting numerous amendments to the plan in document [SM1](#) which mainly respond to changes in circumstances or seek to address issues raised through the representations. These include the deletion of a considerable number of policies from the plan including site specific policies SAMU5; SAH1, 2 & 3; and SAE2, 3, 4, 5 & 6 – reflecting mainly grants of planning permission on some of those sites. The suggested amendments also include adjustments and additions or deletions of policy wording elsewhere in the plan all aimed at improving the soundness of the plan. To date these suggested changes have not been carried forward into an updated Sustainability Appraisal.
- 1.3.9 Therefore, whilst the Council is satisfied that the SA provides an adequate assessment of the plans policies, proposals and reasonable alternative at the point that it was submitted in 2017, it anticipates that an update is likely to be required before the plan proceeds to adoption – particularly if the Inspector is minded to recommend main modifications in line (or otherwise) with the Council's suggestions in [SM1](#). Given the nature of the suggested amendments which aim to improve the soundness of the plan and ensure it reflects the updated housing and employment supply positions, the Council would not expect an update to the SA to give rise to the need to consider an alternative strategy for the period to 2033. This is particularly the case now that the housing and employment needs up to 2033 can be met almost entirely from the committed supply.

**1.4 Is the Habitats Regulations Assessment report Section 2 robust and credible in its conclusions? Are all the report's recommendations to modify the plan included in the Council's schedule of proposed modifications? Have any concerns been raised about the HRA and are there any outstanding concerns from Natural England?**

Robustness and credibility of conclusions

- 1.4.1 Yes, the Habitats Regulations Assessment (HRA) ([CD6.1](#) & [CD6.2](#)) for the Section 2 Local Plan is robust and does come to credible conclusions.
- 1.4.2 Tendring District Council commissioned LUC to carry out the HRA of the Section 2 Local Plan in October 2016. LUC was also commissioned separately to carry out the HRA of the Section 1 Local Plan ([CD6.3](#)).
- 1.4.3 LUC's approach to the HRA complied with both the Habitats Regulations and best practice. It adopted a two stage approach comprising, firstly, a Screening Assessment, and secondly, Appropriate Assessment. The purpose of the Screening Assessment was to identify whether the policies and proposals in the Section 2 Local Plan, either alone or in-combination with other plans or projects, could give rise to Likely Significant Effects (LSEs) on European sites, being those sites considered to be of international importance for nature conservation. A distance of 20km from the boundary of Tendring District was used to identify such European sites, which is consistent with the HRAs of Local Plans undertaken elsewhere in the country.
- 1.4.4 The Screening Assessment in relation to the Publication Draft of the Section 2 Local Plan identified that LSEs could not be ruled out with respect to a number of policies and proposals in the Section 2 Local Plan, with regard to certain European sites. In summary the LSEs identified were:
- Physical loss/damage (offsite functional land) – Abberton Reservoir SPA/Ramsar, Blackwater Estuary SPA/Ramsar, Hamford Water SAC, Hamford Water SPA/Ramsar, Stour and Orwell Estuaries SPA/Ramsar, and Colne Estuaries SPA and Ramsar.
  - Recreational Impacts – Essex Estuaries SAC, Hamford Water SAC, Hamford Water SPA/Ramsar, Stour and Orwell Estuaries SPA and Ramsar, and Colne Estuary SPA/Ramsar.
  - Water quality – Essex Estuaries SAC, Stour and Orwell Estuaries SPA/Ramsar, Colne Estuary SPA/Ramsar.
  - Non-physical disturbance – Stour and Orwell Estuaries SPA/Ramsar.
- 1.4.5 The Appropriate Assessment stage therefore looked in more detail at the potential for Adverse Effects on the Integrity (AEOI) of these European sites for the LSEs identified, in light of mitigation and avoidance measures, either alone or in-combination with other plans or projects. Where necessary, suitable mitigation measures and modified policy

wording was provided in the HRA Report which would enable a sufficient level of certainty to conclude no AEOIs.

- 1.4.6 The HRA Report (May 2017, [CD6.2](#)) of the Publication Draft of the Section 2 Local Plan concluded that “the current approach being taken by Tendring District Council in addressing the key issues, particularly with regards to working alongside the other North Essex Authorities in relation to strategic growth, is advocated and deemed to be the most appropriate and pragmatic approach in ensuring that the Tendring District Draft Local Plan Part 2 is sound. In conclusion, providing that key recommendations and mitigation requirements are fully developed and included within the Tendring District Draft Local Plan Part 2, and can be successfully implemented, there will be no adverse effects on the above sites either alone or in-combination” (para 7.10, [CD6.2](#)).
- 1.4.7 The May 2017 HRA Report was published for consultation and comments were provided by Natural England and the RSPB. In addition, an importance piece of case law emerged with respect to interpretation of the Habitats Directive, being the CJEU ruling (People over Wind, Peter Sweetman v Coillte Teoranta, Case C-323/17). This ruled that Article 6(3) of the Habitats Directive should be interpreted as meaning that mitigation measures, specifically measures which avoid or reduce adverse effects, should be assessed as part of an Appropriate Assessment, and should not be taken into account at the Screening stage.
- 1.4.8 The HRA Report was therefore updated to address the consultation comments and to comply with the ‘People over Wind’ ruling. The updated HRA Report was prepared in October 2018 ([CD6.1](#)). The updated HRA Report identified a slightly greater range of potential LSEs than in the earlier HRA Report, and comprised:
- Physical loss/damage – Stour and Orwell Estuaries SPA/Ramsar (direct and offsite functionally linked land); remaining sites, Abberton Reservoir SPA/Ramsar, Blackwater Estuary SPA/Ramsar, Hamford Water SAC, Hamford Water SPA/Ramsar, and Colne Estuaries SPA and Ramsar (offsite functionally linked land only).
  - Recreational impacts – Essex Estuaries SAC, Hamford Water SAC, Hamford Water SPA/Ramsar, Stour and Orwell Estuaries SPA and Ramsar, and Colne Estuary SPA/Ramsar.
  - Water quality – Essex Estuaries SAC, Stour and Orwell Estuaries SPA/Ramsar, Colne Estuary SPA/Ramsar.
  - Non-physical disturbance – Stour and Orwell Estuaries SPA/Ramsar.
  - Non-toxic contamination – Stour and Orwell Estuaries SPA/Ramsar.
- 1.4.9 The Appropriate Assessment stage of the updated HRA Report noted where the recommendations of the previous HRA had been taken into account with respect to the Section 2 Local Plan and identified further recommendations to ensure that no AEOIs would occur as a result of implementation of the Section 2 Local Plan, either alone or in-combination with other plans or projects. The updated HRA Report concluded (para 7.18, [CD6.1](#)):

*“The current approach being taken by Tendring District Council in addressing the key issues, particularly with regards to working alongside the other North Essex Authorities in relation to strategic growth, is advocated and deemed to be the most appropriate and pragmatic approach in ensuring that the Tendring District Draft Publication Local Plan Section 2 is sound. In conclusion, the Tendring District Draft Publication Local Plan Section 2, has been updated to include the specific policy safeguards and commitments previously recommended, and providing that the additional mitigation measures and safeguards in relation to policies SAE5 and SAE6 are adopted and successfully implemented, it can be concluded that there will be no adverse effects on European sites either alone or in-combination.”*

- 1.4.10 It should be noted that throughout the HRA process, LUC adopted a precautionary approach, and that HRA was undertaken with ongoing engagement with Natural England and the Council. This engagement extended to include the HRA of the Section 1 Local Plan, which also covered Colchester Borough and Braintree District, and which was recently found sound at Examination. The Section 1 and Section 2 Local Plans are closely inter-related, and many of the issues relating to the HRAs of the two levels of Local Plan were addressed in a co-ordinated way.
- 1.4.11 Since publication of the updated HRA Report, a new piece of case law has emerged, being *Holohan v An Bord Pleanala* (November 2018). Known as the ‘Holohan’ judgment, this stated, amongst other things, that “Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that an ‘appropriate assessment’ must, on the one hand, catalogue the entirety of habitat types and species for which a site is protected, and, on the other, identify and examine both the implications of the proposed project for the species present on that site, and for which that site has not been listed, and the implications for habitat types and species to be found outside the boundaries of that site, provided that those implications are liable to affect the conservation objectives of the site.”
- 1.4.12 LUC’s approach to the HRA of the Section 2 Local Plan already took into account supporting habitats and species, as evidenced by the interrogation of the likely effects of the Section 1 Local Plan on off-site functionally linked land in the Appropriate Assessment stage. Therefore, LUC is confident that the findings and conclusions of the HRA will remain unaltered. However, the HRA at the proposed modifications stage will be updated to explicitly address the *Holohan* judgment.

#### Incorporating the report’s recommendations

- 1.4.13 The May 2017 HRA Report ([CD6.2](#)) included a number of recommendations that, where possible, were incorporated into the Publication Draft of the Section 2 Local Plan for consultation. These are acknowledged in the updated HRA Report, prepared in October 2018 ([CD6.1](#)).
- 1.4.14 The updated HRA Report also included recommendations, some of which followed through from the previous version of the HRA, and others that arose from the updated HRA work. The Council is of the view that these recommendations have been

addressed through the Submission version of the Local Plan as worded or through proposed modifications.

- 1.4.15 Of particular note are the proposed modifications to Policy PPL4 (Biodiversity and Geodiversity) and its supporting text, which strengthen references to the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) ([EB7.3.1](#)), which was adopted in 2019 . The Essex Coast RAMS aims to deliver the mitigation necessary to avoid adverse effects on integrity from the in-combination impacts of residential development in Essex. It identifies a detailed programme of strategic avoidance and mitigation measures which are to be funded by developer contributions from all residential development within the Zones of Influence. In addition, a proposed modification to Policy PPL4 will require applications for proposals for development likely to have a significant impact upon International and European sites to be supported by an HRA including, where necessary, a more detailed 'Appropriate Assessment'. Although this is a matter of law, the Council considers that inclusion of this requirement in the policy wording itself will raise both awareness of, and weight given to, the importance of this strategic issue by applicants and others involved in the planning process.
- 1.4.16 With regard to Policy HP5 (Open Space, Sports and Recreation Facilities), the proposed modifications respond to the recommendation in the HRA (para 6.148) to include specific reference to the role of open space and green infrastructure in providing alternatives to European sites.
- 1.4.17 The proposed modifications to Policy PPL 5 (Water Conservation, Drainage and Sewerage) address the recommendation in the HRA to ensure that proposals for development demonstrate that adequate provision for sewage disposal to a public sewer and water recycling centre exists or can be made available provided 'in time' to support the development.
- 1.4.18 Some of the recommendations in the HRA Report have not been addressed in exactly the way recommended in the updated HRA Report. For example, some of the site specific recommendations, such as those relating to Policy SAMU3 (Development at Oakwood Park, Clacton), Policy SAMU4 (Development at Rouses Farm, Jaywick Lane, Clacton), Policy SAE1 (Carless Extension, Harwich), and Policy SAE7 (Stanton Europark) are addressed through the suggested modifications to Policy PPL5 (Water Conservation, Drainage and Sewerage) and the provisions of Policy DI1 (Delivery Infrastructure and Impact Mitigation), rather than through the site specific policies themselves. The Council believes that these provide sufficient safeguards to ensure no AEOIs on European sites.
- 1.4.19 The updated HRA Report (para 6.30) [CD6.1](#) included a recommendation for Policy SAE1 (Carless Extension, Harwich) to include a specific requirement, with respect to Hamford Water SAC, for development proposals to include an assessment to determine the importance of grassland habitats within the site for Fisher's estuarine moth and whether the site supports a suitable extent of Hog's fennel and coarse

grasses required to support this moth species, plus avoidance and mitigation measures should they be required. The Council is of the view that the requirement to assess the impacts of development on specific species will arise from any phase 1 habitat survey which will need to accompany any future planning application, and that it is not necessary to include the level of detail recommended in the HRA in the wording of the policy to avoid AEOIs on this European site.

- 1.4.20 The updated HRA Report (para 6.44) [CD6.1](#) recommended that wintering bird surveys be required for the three allocations of Hartley Garden Village, Rouses Farm, and Tendring and Colchester Borders Garden Community as part of any project level development proposals to determine their individual and cumulative importance for golden plover and lapwing and inform mitigation proposals, and that a commitment to mitigation and phasing of development is required within the Local Plan. With respect to the Tendring and Colchester Borders Garden Community, this recommendation is addressed in para 1.93 of the Local Plan. For Rouses Farm (Policy SAMU4) the developers have submitted a full Environmental Statement containing ecological surveys in support of their planning application which are being considered by the Council in consultation with Natural England. Therefore the Council does not propose to modify the wording of the policy. With respect to Hartley Gardens (Policy SAMU2) The Council has commissioned a preliminary ecological appraisal and a wintering bird survey to identify the use of the site for foraging by SPA birds (golden plover and lapwing), the outcomes of which will inform the site masterplan and any mitigation requirements. The policy itself now includes a proposed modification “to demonstrate that no internationally designated site would be adversely affected by the development either alone or in combination with other proposals as per the requirements of Policy PPL 4...” The Council therefore is of the view that these HRA recommendations have been addressed.
- 1.4.21 In two instances where site specific recommendations from the HRA applied, being Policy SAH2 (Development at Low Road, Dovercourt), Policy SAE2 (Land South of Long Road, Mistley), the sites either have planning consent or are in occupation. The proposed modification is therefore to delete these policies from the Local Plan. Therefore, the recommendations of the HRA are no longer relevant.
- 1.4.22 With regard to the recommendations of the HRA to introduce safeguards in relation to physical loss/damage (direct), non-physical disturbance and non-toxic contamination to the Stour and Orwell Estuaries SPA/Ramsar into Policy SAE5 (Development at Mistley Port) and Policy SAE6 (Development at Mistley Marine), the proposed modifications delete both policies on the basis that they are unnecessary and instead show both sites as protected employment sites to which Policy PP6 (Employment Sites) will apply. Therefore, the recommendations of the HRA are no longer relevant.
- 1.4.23 The Council recognises that, in some instances, judgements have been applied as to the precise way in which recommendations of the HRA are most appropriately addressed in the Local Plan. Should the Inspectors consider that the policies or supporting text would benefit from additional or amended wording to reflect the HRA

recommendations, the Council would be happy to explore this matter in co-operation with Natural England.

#### Concerns or outstanding matters

- 1.4.24 As described above, there has been considerable engagement with Natural England throughout the HRA process, and the views of the RSPB and the information held by the RSPB have helped ensure that the HRA has addressed all the relevant issues in accordance with the Habitats Regulations and best practice.
- 1.4.25 At the Publication Draft Local Plan, both the RSPB and Natural England commented on the accompanying HRA Report ([CD6.2](#)). No other stakeholders provided substantive comments.
- 1.4.26 To address the comments raised by the RSPB and Natural England, the Council asked LUC to update the HRA Report, and this was published as described above, in October 2018 ([CD6.1](#)). The updated HRA Report refers to the points raised by the RSPB and Natural England and describes how they have been addressed.
- 1.4.27 The RSPB recommended that the Stour and Orwell estuaries, Hamford Water and Colne Estuary SPAs should be screened in to the Appropriate Assessment stage with respect to non-toxic contamination. LUC reviewed its screening conclusions in relation to these three European sites, and on the basis of the policies in the Local Plan, came to the conclusion that there would not be LSEs from non-toxic contamination in relation to Hamford Water and Colne Estuary SPAs. The Stour and Orwell Estuaries SPA was taken through to Appropriate Assessment,
- 1.4.28 The RSPB recommended that Policy PPL10 (Renewable Energy Generation) should be screened into the HRA. LUC concluded that this policy should not be screened into the HRA, as described in Appendix 2 of the updated HRA Report ([CD6.1](#)). The Council is of the view that the policy concerns renewable energy proposals at all scales. The District has one large-scale windfarm near Clacton-on-Sea (and several solar farms in the north). The Council does not envisage other similar schemes being developed and has not identified any areas as suitable for such future developments. Should any such applications be made then EIA (Environmental Impact Assessment) would be required.
- 1.4.29 All other aspects of the RSPB representation were addressed in the updated HRA.
- 1.4.30 With respect to Natural England representations, paras 7.19 and 7.20 of the updated HRA ([CD6.1](#)) noted that Natural England confirmed in its response, dated 28th June 2017, that it supported the conclusions of the earlier HRA ([CD6.2](#)). The HRA Report quoted from Natural England's response that "Based on the information provided in the AA, and provided each of the recommended safeguards are fully incorporated into the relevant policies, Natural England agrees that the Plan is unlikely to have an adverse effect on the integrity (AEOI) of Abberton Reservoir Special Protection Area (SPA) and Ramsar site<sup>1</sup>, the Blackwater Estuary SPA and Ramsar site, Colne Estuary

(Mid-Essex Coast Phase 2) SPA and Ramsar site, the Essex Estuaries Special Area of Conservation (SAC), Hamford Water SAC, SPA and Ramsar site or the Stour and Orwell Estuaries SPA and Ramsar site”.

- 1.4.31 Natural England’s subsequent concerns relate not to the HRA itself, but to ensuring that the recommendations in the HRA are reflected in the Local Plan. These concerns are addressed in the response to the second part of Q1.4 above, and also in the Schedules of Representations and Responses prepared by the Council and provided to the Examination.
- 1.4.32 In the Council’s view, all concerns raised by Natural England and other parties with respect to the HRA and how these have been addressed through the Local Plan policies, either as worded in the Submission version of the Local Plan, or in the proposed modifications, have been resolved.
- 1.4.33 However, as noted above, should the Inspectors consider that the policies or supporting text would benefit from additional or amended wording to further ensure no AEOIs on European sites, the Council would be happy to explore this matter in co-operation with Natural England.

**1.5 Does the plan include policies designed to ensure that the development and use of land in Tendring contributes to the mitigation of, and adaptation to, climate change?**

- 1.5.1 Yes, adaptation to and mitigation of climate change represents a central theme of the emerging Local Plan and Objectives 6, 8 and 9 in chapter 2. Specific policies within the plan that seek to contribute to the adaptation to and mitigation of climate change include:
- Policy SPL1;
  - Policy SPL2;
  - Policy SPL3;
  - Policy HP3;
  - Policy PPL1;
  - Policy PPL4;
  - Policy PPL5; and
  - Policy PPL10.
- 1.5.2 Policies SPL1 and SPL2 together provide a framework for actively managing patterns of growth to make the fullest use of public transport, walking and cycling and focusing significant development in locations which are or can be made sustainable (as explained in more detail in the Council’s hearing statement in respect of Matter 2) – with a view of minimising carbon emissions that result from an over-reliance on private car use.

- 1.5.3 Policy SPL3 (see the Council's hearing statement for Matter 6 for more details) requires consideration of greenhouse gas omission, the provision for recycling and combating the impacts of flood risk. It requires development to consider climate change adaptation measures and technology from the outset including reduction of emissions, renewable and low carbon, passive design, and through green infrastructure techniques where appropriate.
- 1.5.4 Policy HP3 explains how green infrastructure mitigates against climate change and Policy PPL1 details the Council's approach to managing flood risk. Policy PPL4 details how internationally, nationally and locally protected sites will be considered and the way in which biodiversity and geodiversity will be addressed. Policy PPL5 deals with the issue of water usage in new development and Policy PPL10 encourages renewable energy installations.
- 1.5.5 Following the Council's declaration of a 'climate emergency' it has been considering ways in which the approach to addressing climate change could be strengthened, including potential improvements to policies in the Local Plan. In July 2020, the Council's Planning Policy and Local Plan Committee consider a number of suggested amendments to certain planning policies relating to housing design standards, efficiency and accessibility. In particular, amendments to Policy PPL10 were considered jointly by the Committee and Council's Climate Change Working Group to ensure they properly embrace the ambitions of the Council in tackling the climate emergency. The amendments to that policy and others are detailed in document [SM1](#) but are discussed further in the Council's hearing statement on Matter 8 (question 8.4)

**1.6 Are there any 'made' Neighbourhood Plans, or any being prepared or in the pipeline? If so, how have these been taken into account and where is this evident?**

- 1.6.1 Tendring currently has three Neighbourhood Plans being prepared and these have progressed to varying stages of the process. These are:
- The Alresford Neighbourhood Plan;
  - The Ardleigh neighbourhood plan; and
  - The Elmstead Market neighbourhood plan
- 1.6.2 More details can be found following this link to the Council's website: [Community-led plans | Tendring District Council \(tendringdc.gov.uk\)](https://www.tendringdc.gov.uk/community-led-plans)
- 1.6.3 All three Neighbourhood Plans relate to parishes in the west of the Tendring District that have a border with Colchester within which two (Ardleigh and Elmstead Market) is the location of the proposed Tendring Colchester Borders Garden Community.
- 1.6.4 The most advanced of these emerging plans is that of Alresford. In 2020, the plan reached examination stage and an independent examiner begun the process on 14<sup>th</sup>

December 2020. The examination findings are expected to be fed back to the District and Parish Councils soon.

- 1.6.5 Ardleigh Parish Council submitted an application to agree the area for their neighbourhood plan over the winter of 2020 this was agreed by the Council on the 8<sup>th</sup> June 2020 allowing the Parish Council to proceed with the next stages of the process. Similarly, Elmstead Market Parish submitted an area application for the neighbourhood plan in late 2020 to which the Council agreed on the 17<sup>th</sup> November 2020.
- 1.6.6 The above Neighbourhood Plans have not been specifically referenced within the Emerging Plan due to their early stages of preparation, or non-existence at the time of submission. The Parish Councils involved have however been advised to prepare a plans that complement the policies and proposals in the emerging Local Plan – particularly now that Section 1 and the proposal for the Garden Community has proceed through the examination process to adoption.
- 1.6.7 The Council does however reference Neighbourhood Plans as a consideration in the determination of planning applications in the wording of Policies SPL2, the suggested amendments ([SM1](#)) to Policy LP4 to cover the likelihood of further Neighbourhood Plans being introduced during the remainder of the plan period.

**1.7 Does the plan comply with all other relevant legal requirements, including in the 2004 Act (as amended) and the 2012 Regulations?**

- 1.7.1 The Section 1 and Section 2 Plans were prepared, consulted upon and submitted for examination, with a shared evidence base, as two parts of the same document. The Planning Inspector's [Final Report](#), "Other legal compliance matters" (Page 9) addresses all matters of compliance relating to the Local Development Scheme (Paragraph 25), Statement of Community Involvement (Paragraph 26), Strategic Priorities (Paragraph 27), and Superseded Policies (Paragraph 28). The Inspector finds all of the matters to have been carried out in accordance with the relevant regulations and legal requirements. At Paragraph 29 of the Inspector's Final Report, the Inspector also finds that "*The Plan complies with all other relevant legal requirements, including those in the 2004 Act and the 2012 Regulations*". For the above reason, and as relates to these matters, there are no legal compliance issues arising from the preparation and submission of the Plan and all legal and compliance matters, pertaining to Section 2 of the submission plan, have already been considered and concluded on by the Section 1 Planning Inspector.
- 1.7.2 Tendring District Council has complied fully with all other relevant legislative requirements in the preparation of Section 2 of the submission Local Plan. As required by Section 19(1A) of the Planning and Compulsory Purchase Act 2004, the Section 2 Plan (taken as a whole) includes policies designed to secure that all development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change (see response to question 1.5 above).

**1.8 Having regard to the matters raised in question 1.6, are there any policies in Section 2 which are in effect strategic policies?**

1.8.1 The Section 2 Plan is being examined under the transitional arrangement under Paragraph 214 (Annex1, NPPF 2019). Paragraph 214 states that the “policies in the previous Framework published in March 2012 will apply for the purpose of examining plans, where those plans were submitted on or before 24 January 2019”. However the Council is also aware that Para 21 (NPPF, 2019) requires that Plans should make explicit which policies are strategic policies.

1.8.2 Further the NPPF requires ‘Strategic Policies’ should be limited to those necessary to address the strategic priorities of the area (and any relevant cross-boundary issues), to provide a clear starting point for any non-strategic policies that are needed. Therefore, the Council has identified and listed its Strategic Policies above for the Inspector’s consideration and conclusion.

1.8.3 The policies in Section 2 of the Local Plan considered to be, in effect’ ‘strategic policies’ are listed as follows:

Local Plan Strategic Policies

1. SPL 1 MANAGING GROWTH
2. SPL 2 SETTLEMENT DEVELOPMENT BOUNDARIES
3. SPL 3 SUSTAINABLE DESIGN
4. HP 1 IMPROVING HEALTH AND WELLBEING
5. LP 1 HOUSING SUPPLY
6. LP 2 HOUSING CHOICE
7. LP 5 AFFORDABLE AND COUNCIL HOUSING
8. LP 6 RURAL EXCEPTION SITES
9. LP 9 TRAVELLER SITES
10. PP 2 RETAIL HIERARCHY
11. PP 5 TOWN CENTRE USES
12. PP 6 EMPLOYMENT SITES
13. PP 8 TOURISM
14. PP 12 IMPROVING EDUCATION AND SKILLS
15. STRATEGIC POLICY PP 13 THE RURAL ECONOMY
16. PP 14 PRIORITY AREAS FOR REGENERATION
17. PPL 1 DEVELOPMENT AND FLOOD RISK
18. PPL 2 COASTAL PROTECTION BELT
19. PPL 4 BIODIVERSITY AND 171 GEODIVERSITY
20. PPL 5 WATER CONSERVATION, DRAINAGE AND SEWERAGE
21. PPL 6 STRATEGIC GREEN GAPS

22. CP 1 SUSTAINABLE TRANSPORT AND ACCESSIBILITY
23. SAMU2 DEVELOPMENT AT HARTLEY GARDENS, CLACTON
24. SAMU3 DEVELOPMENT OAKWOOD PARK, CLACTON
25. SAMU4 DEVELOPMENT AT ROUSES FARM, JAYWICK LANE, CLACTON

**1.9 Are there any conflicts between the Strategic Policies set out in Section 1 and the Local Policies in Section 2?**

1.9.1 There are no conflicts between the strategic policies in Section 1 of the Local Plan and the local policies in Section 2 that the Council is aware of or that have been highlighted through any representations. At the Inspectors' request, the Council has produced Topic Paper 1 on "Consequential Changes" ([TP1](#)) which (in Part 1) aims to specifically address any potential consequential changes to individual policies, within the Section 2 plan, resulting from the proposed Main Modifications identified within Section 1 (which have now been incorporated into the Section 1 Plan and adopted by the Council). Part 2 of [TP1](#) considers any changes in National Legislation/Policy since the submission of the plan might have a bearing on its soundness.

1.9.2 Some changes to the Section 2 Plan have been suggested by the Council that arise either directly or indirectly from the modifications to Section 1. These are summarised as follows:

- Amendments to Policy PPL4 and its supporting text to provide specific reference to the Essex Coast Recreational disturbance Avoidance Mitigation Strategy (RAMS);
- Revisions in Policy LP1 and associated tables to the contribution of housing in the remainder of the plan period to 2033 expected from the Tendring Colchester Borders Garden Community following the Inspector's conclusions on its deliverability;
- Amendment to Policy PP7 to reflect the employment land expectations of the Garden Community;
- Amendment to Policy LP9 to reflect the potential for gypsy and traveller provision at the Garden Community; and
- Amendment to Local Map B.7 to more accurately reflect the 'Broad Area' for the Garden Community shown on the revised Key Diagram 10.2 in Section 1.

**1.10 Are the Vision and Objectives in the plan appropriately articulated, are there any omissions? Are they in line with national policy?**

- 1.10.1 The Vision and Objectives in the plan are appropriately articulated and there are not considered to be any omissions. Section 2 of the publication draft, Tendring District Local Plan (Page 75) sets out the 'Vision and Objectives' to 2033. Section 2.2 sets out the overall objectives for the plan required to support this vision. They are all considered to be in alignment with national policy. All the policies in the Section 2 Local Plan can be linked back to one or more the objectives, as identified at the bottom of each policy.
- 1.10.2 In response to the various representations ([RR3](#)), several modifications have been suggested to improve and align the 'Vision' and objectives for Section 2. These amendments are considered to be relatively minor and address the points raised in representations – none of which bring into question the thrust of the objectives or their alignment with national policy. Neither do they identify any particular omissions.
- 1.10.3 For example, based on the Environment Agency (EA) comments ([LPPuD100](#)), which were largely supportive of the thrust of the vision, changes have been made to take account of the significance of climate change. Also, based on comments from Historic England (HE) ([LPPuD120](#)) modifications are suggested to include a reference to preserve and enhance significant heritage features” and they welcome that ‘Objective 8’ now includes reference to geodiversity and biodiversity. In addition: modifications have been suggested for to Objective 1 in response to comments from Gladman Homes ([LPPuD333](#)). Modifications have also been made to Objective 2 ([LPPuD367](#)), Objective 3 ([LPPuD473](#)) and Objective 6 ([LPPuD474](#)) in response to comments from Britton Properties.
- 1.10.4 The Council’s Vision has also taken on board all comments from the Environmental Agency and Historic England and there has been general support for the thrust of the Vision. For example, based on the HE response a small amount of text indicating the aspiration to preserve and enhance the special historic character of Clacton-on-Sea has been agreed in the second paragraph of the Vision, Also, the EA *“are encouraged by the Vision advocating that Green and blue infrastructure, among other things, will be planned and provided along with other facilities to support the development of substantial new growth”*. In addition, it has been agreed that the following wording be included, as part of the Vision, based on the EA response *“Tendring District’s coastal area places economic, social and environmental considerations at the forefront of climate change and therefore there will be a need to place adaptation and mitigation against climate change at the centre of sustainable development.”*
- 1.10.5 The Council considers that the vision and objectives in the Section 2 Plan, with the suggested amendments, align with those of the Section 1 Plan and with national policy whilst appropriately setting out the local-level aspirations of the district and its different communities.