North Essex Garden Communities Ltd

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Garden Communities

Response to Further Hearing Statements for Matter 5 (Delivery Mechanisms and State Aid)

16 December 2019

Matter 5 (Delivery Mechanisms and State Aid) – Response to Further Hearing Statements

The observations, responses and comments in this statement refer to statements from CAUSE; Matthew O'Connell; Crest Nicholson Operations Ltd, R.F. West Ltd, Livelands and David G Sherwood; Mike Lambert; and the L&Q, G120 and Cirrus Consortium.

Q5. (a.) *If the Section 1 Plan is neutral as regards who will be responsible for leading delivery of the proposed garden communities, how will the NEAs be able to ensure through their development management powers that any garden community proposal that comes forward meets all their policy aspirations for the garden communities?*

In CAUSE's statement they describe NEGC Ltd as in a temporary state and that its current structure will not be the eventual delivery vehicle of the garden communities. Indeed, it is envisaged that the nature and role of NEGC Ltd will change as the process evolves. However, the current arrangement is suitable to assist in the planning of the garden communities and also in exploring alternative forms of delivery, including financial and governance options, approaches and mechanisms.

We agree that in CAUSE's 'Alternative 1', the concept of relying solely on the private sector for garden community delivery should not necessarily be the preferred route. On its own, no individual private sector organisation is in a position to achieve the scale and type of new settlement planning, delivery and formation required by the Local Plans. It would also result in far less public sector influence and also far less being able to be achieved for wider public benefit through the limitations of subsequent planning negotiations compared to a public sector-led and delivered approach. In addition, access to government support and funding would be lower and the ability of a solely private sector commercial entity to facilitate and deliver the legacy and level of ongoing garden community stewardship into the future would be in question.

It is not agreed that CAUSE's 'Alternative 2' is an unviable approach. This is a tried and tested model of which versions saw the delivery of a multitude of the New Towns and extensive urban regeneration via Urban Development Corporations. Within this, compulsory purchase was also one of a number of tried and tested tools in addition to private treaty agreements that were used to quickly and fairly achieve development objectives over a number of decades.

It is not agreed that CAUSE's 'Alternative 3' is an unviable potential approach. However, the CAUSE diagram misses a point in that the master developer would not be solely a private sector entity but rather also have the direct involvement, active participation and influence of the public sector. This is a tried and tested model of public/private joint venture which is currently being used and to deliver a number of strategic developments, including the Manydown garden community on the western edge of Basingstoke (with Urban & Civic and the financial backing of the Wellcome Trust).

Also, it is envisaged that the initial Development Plan Documents to facilitate this could be approved by the NEAs by early 2022. This provides adequate time to procure and secure an appropriate master developer partner that, together with the public sector-led Locally Led Development Corporation, would take a 50/50 role in the delivery of the garden communities.

Such an approach enables the best of both public and private sector advantages and expertise to be utilised. It also allows for an equitable sharing of risk and reward between the parties. Additionally, such a structure would enable a greater opportunity to realise essential garden community legacy and stewardship opportunities from the outset of development.

Government LLDC guidance is clear on the main components of how such structures and public/private partnership can work to help deliver garden communities. As such the Crest Nicholson Appendix 2 table should be corrected to include Urban & Civic and the Wellcome Trust.

Mr Lambert's statement that robust and very detailed DPDs will need to be in place for all three garden community sites is one that NEGC Ltd fully agrees with because it is a key tenet of the NEAs' approach to the planning of the schemes. Work on these documents have already started with an initial consultation carried out over Winter 2017/18. This initial work, alongside further non-statutory engagement led out my NEGC Ltd, will result in a statutory consultation on draft DPDs in late 2020/early 2021 leading to adoption in early 2022.

In turn, this would enable the approval of the appropriate Local Development Orders in mid-2022, which will have been prepared in parallel to the DPDs. Based upon this broad sequence, it is anticipated that this would facilitate on-site enabling works commencing in early to mid-2023.

Q5.(b.) *In this regard, do any further amendments need to be made to policy SP7 paragraph 3 (beginning "The Councils will need to be confident ...") and/or to policy SP7 criterion (ii)?*

We agree with CAUSE's view that the Local Plan should look to ensure that 'piecemeal uncertain planning applications' should not be entertained, is essential.

Q5.(c.) *Should the Section 1 Plan instead specify that delivery of the proposed garden communities should be led by a public-sector local delivery vehicle, a Locally Led New Town Development Corporation, or a private-sector developer?*

We do not agree with Mr Lambert's statement that the garden communities by default must be private sector-led or with CAUSE's statement that the Councils need to determine the finalised delivery structure at this point in proceedings (i.e. Local Plan stage). The Councils have set up NEGC specifically to explore both public and public/private partnership delivery options for the garden communities and in particular 'Alternatives 2 and 3' above and especially those that can offer public/private joint venture delivery opportunities and therefore more certainty of delivery.

Q6.(a.) *Would the existence of a viable alternative master developer with control over land allocated for a garden community restrict the ability of the Secretary of State to confirm a CPO on that land (see paragraphs 8.10-8.11 of the consultation response to EB/084 from Carter Jonas on behalf of L&Q, Cirrus Land Ltd and Gateway 120)?*

NEGC Ltd's concern is that no individual private landowner or organisation has absolute control over all of the land required for development and/or infrastructure requirements of a single, comprehensively-planned garden community. However, the NEGC Ltd position here is an advantage in that it is not solely dependent upon a compulsory purchase approach.

Alternatively, a publicly-led LLDC has the potential ability to both negotiate (i.e. via private treaty agreement as per our responses to Q3, Q4 and Q6 in our Further Hearing Statement) and also to use compulsory purchase as required in order to situate itself into a strong leading and controlling position and thereby securing all of the land required for a comprehensively-planned garden community. LLDCs are designed to provide holistic and coordinated delivery across the entirety of the garden community sites, not just parts, as proposed by Crest Nicholson. It is appropriate to note the Carter Jonas statement in paragraph 2.21 which supports this: “Nor does our stance on the use of CPO prohibit alternative approaches that allows public sector control over site delivery. The Delivery Partners remain open to the possibility of partnerships or joint ventures, whether under the umbrella of a locally-led new town development corporation or otherwise.”

Q7. Would the NEAs and NEGC Ltd please respond to the critique of EB/085 in Mr O’Connell’s paper North Essex Garden Communities State Aid Considerations (also submitted by CAUSE)?

All of the points that have been raised by other parties about state aid in their Further Hearing Statements are addressed by our position as outlined in paragraphs 7 & 8 of the NEGC Hearing Statement on the Matter 5 that was submitted on 02 December 2019. In addition, we have provided further clarification to our original statement for question 7 as shown in the following paragraphs set out in the table below. In addition, Homes England has provided additional supportive information which is attached in Appendix 1 to this statement.

“NEGC Ltd is conscious that there are numerous regulatory factors, including state aid, involved in developing the structures for these public/private partnership options. Consequently, NEGC Ltd can confirm that a key principle that it has adopted and will continue to adopt is that of obtaining finance and transacting land/house disposals at state aid compliant market costs/values.

This is the same approach that has been adopted in other public/private partnerships across the country where state aid compliant mechanisms can be and have been designed and implemented. In terms of any Government funding awarded to the North Essex Garden Communities project including Housing Infrastructure Funds (HIF), it would be for the relevant Government department to undertake a state aid assessment which presumably would be made on a delivery model blind basis.

If it were necessary, in addition to obtaining finance and transacting land/house disposals at ‘market’ compliant market costs/values, there are various state aid compliant mechanisms available to public bodies which would potentially permit an intervention on a less than ‘market’ basis. For example, there are various categories of permissible aid under State Aid general block exemptions (which contain circa 40 categories) or no aid options (e.g., where a public body funds the construction of roads and highways which are available to all users equally). At present it is not anticipated that there will be a need to rely on any exemptions.”

Appendix 1 – Supporting statement from Homes England

Homes England Statement on State Aid and Lending

1. My name is Gareth Blacker, Director of Strategic Development and Infrastructure at Homes England. I am a chartered surveyor specialising in major project development and development infrastructure finance.

2. Homes England provide infrastructure loans to unlock or accelerate large scale housing development projects. Over the past six years Homes England has contracted or committed approximately £2.5billion of infrastructure loans. This finance has unlocked or accelerated the delivery of approximately 200,000 homes. The quantum of individual infrastructure loans has ranged from £10million to £200 million. The term of the loans is typically between 8 and 12 years. The interest rate applied to the loans has usually been a margin ranging from 220bps to 450bps above a variable EC reference rate (currently 0.90%). Recipients of the funding has usually been major developers with the ability to deliver large projects including Canary Wharf Group, Urban and Civic, Quintain and Delancey.

3. Both Homes England and the developers need to be satisfied that the lending transactions are State Aid compliant. This is achieved by following EC guidance, the details of which are set out in the following paragraphs.

4. Homes England reviews creditworthiness and collateralisation for the purpose of interest rate setting. This approach follows the EC adopted market methodology for setting reference rates which are applied as a proxy for the "market rate", as set out in the Communication from the Commission on the revision of the method for setting the reference and discount rates (2008/C 14/02). It has been set out with the benefit of state aid advice.

5. The Commission use the reference rate methodology as the basis for considering the minimum interest rate to be used as, in most cases, there will be no actual market rate to compare. On that basis, we consider that it is appropriate for Homes England to use the Commission's reference rate methodology in order to calculate for State Aid purposes the "market" interest rate applicable to loans.

6. The combination of the Creditworthiness and Collateralisation generates a Margin to be added to the EC base rate (see below). The following table sets out the range of Margins to be applied (in basis points):

Creditworthiness	**Collateralisation**		
	High	Normal	Low
Strong (AAA-A)	60	75	100
Good (BBB)	75	100	220
Satisfactory (BB)	100	220	400
Weak (B)	220	400	650
Bad/Financial Difficulties (CCC and below)	400	650	1000

Creditworthiness

7. Where borrowers have a rating from a recognised Credit Rating Agency this will be used. Where the borrower does not have a rating, Homes England will review its creditworthiness. This involves an assessment of the borrower's financial standing and the risks associated with lending to that business - likelihood of default (encompassing both capacity and willingness to pay) is an important factor. Considerations may include:
   - Financial analysis - profitability, net asset position/balance sheet strength, gearing, etc.
   - Assessment of the trading history/development experience of a borrower – evidence of a "track-record" of delivery.
   - The ability of the borrower to service the loan (interest and capital when required under the legal agreements) in the context of its existing commitments.
   - Accounts, credit-checks, references - leading to an overall profile of a borrower.
   - Benchmarking against peer companies.

Collateralisation

8. This considers the value of the security offered against the loan therefore enabling the lender to assess potential losses. This will include the value of the property, the security offered (i.e. first/ slash second charge) and also the bidder's balance sheet strength. Homes England will require evidence of the schemes potential to service and repay the loan from the scheme cashflow (assessed by its advisors) and adequate security (supporting the level of proposed borrowing) to minimise its loss in a default scenario (e.g. a legal charge, parent company guarantee, performance bond, debenture). This assessment of the strength of cover then defines the high, normal or low category, against which the pricing is set - as shown in the table in paragraph six.

Gareth Blacker

December 2019