Matter 5 & Matter 7 Hearing Statement Responses
Matthew O'Connell

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As a reminder to the Inspector, as set out in my consultation responses, my professional background spanned across corporate finance / debt financing / market risk management (including inflation derivatives) for a large investment bank, Goldman Sachs. As a result, I have significant experience in assessing the credit risk profile of projects as well as their ability to raise debt and equity financing and what potential market pricing for such financing might be.

The NEA and NEGC hearing statements for Matters 5 and 7 make a number of high level points on Delivery Mechanisms, State Aid and Viability which I believe are best addressed together given the intrinsic overlap of these topics. Having reviewed these hearing statements in detail, I continue to be of the firm view that the proposed sites in the context of the Plan are neither deliverable nor viable. A number of concerns raised by myself and others around problematic and unprecedented aspects of the projects have not been addressed adequately, with the NEAs now trying to brush over difficult questions or even claim in a number of cases that such concerns should be deferred until the sites have been allocated.

Following the Overview below, I shall make detailed comments in relation to the individual hearing statements from the NEAs and NEGC in tabular format for clarity.

Overview

The NEA's summary comments in their hearing statements appear to indicate that they have lost sight of key elements of the NPPF, while also not taking note of the Inspector's letter following the first examination where the Plan was found unsound.

Specifically, NPPF (2012) 182 states that Local Plans must be:

- *Justified – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;*
- *Effective – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities;*

The significance and implications of these elements are considered below.

1. Proportionate Evidence

The NPPF's "proportionate" is key: the evidence required for one Local Plan may be very different in quantity compared to another Local Plan. The proposals here are vast in scale and delivery risk – it is of course natural that an examination may require a larger amount of information to show Plan soundness. The idea that the volume of information (on delivery/state aid or viability) produced in itself makes the Plan more likely to be sound is bizarre, while the implication that there should be a limit as to what can be considered proportionate for a Local Plan is equally flawed.

2. Deliverability

The NPPF requiring the Plan to be "deliverable over its period" is primarily a function of viability but also relates to delivery structure/mechanism.

There appears to be no precedent for such large projects (even before cumulative impact is considered) with similarly significant policy requirements for infrastructure and where land is not owned at the outset but there is at the same time a clear desire for – at the very least – public sector oversight but more likely some direct intervention, given the challenge relating to protecting and achieving the aforementioned policy requirements. It is therefore only logical that detailed considerations of numerous aspects of viability and delivery have been key elements of the examination.

3. State Aid

With the focus on the potentially unprecedented delivery model – and lack of borrower credit quality which for example the land purchase assumptions would drive – it would be surprising given the NPPF focus on deliverability if State Aid had not arisen as an issue in relation to this Plan.

The much-quoted PwC report – its most sensitive parts still redacted despite the Inspector requesting their publication – made repeated reference to State Aid/MEOP considerations wherever there is public sector delivery involvement. This rightly led the Inspector to question the suitability of the 6% finance rate in the viability analysis, citing State Aid as a key concern at this stage.

Nothing has emerged which suggests that State Aid is less of a concern in relation to the Plan than when the Inspector asked this question. As CAUSE's Matter 5 hearing statement (which I provided detailed input on) noted at length, all potential delivery structures have broad unanswered questions around either a) ability to deliver in line with policy requirements; and / or b) financial viability without illegal State Aid reducing borrowing cost. Delivery "blindness" obviously neither mitigates this (in fact exacerbating the issue) nor provides confidence through multiple potential routes as the NEAs suggest.

4. The 6% Finance Rate

The Inspector's concerns around the finance rate are clearly of the utmost relevance then. However, there has never been any positively prepared, meaningful, evidence on the suitability of a 6% finance rate despite the Inspector's question.

I know from my professional experience that the "devil is in the detail" on finance cost – a high level discussion around a "roughly 6% interest rate" in relation to a "large, innovative housing development" can quickly become "an 8-10% area" once a debt investor realises for example that i) there is limited land asset base across the project; ii) interest is being funded by further borrowing for much of the project; and iii) any "sensitised" modelling suggests huge cashflow gaps and potential default. What have the NEAs or NEGC discussed with potential debt investors? Just their overly optimistic modelling? Certainly not a detailed, "warts and all" view of the project's credit profile, as would actually be assessed before any debt is committed. The point will be clear – this area has not been addressed satisfactorily and therefore neither has potential State Aid compliance at 6% finance cost.

A reliance on developers "endorsing" a 6% finance rate is also very shaky ground given most highlight this being very dependent on market conditions (hardly supportive of "through the cycle" viability/deliverability…) and their view on 6% minimum finance cost will – as for the NEAs/NEGC above – be based on their tangibly overly-optimistic "upside case" modelling and the associated more positive borrower credit profile.

5. Viability

Proving viability of these sites has not been possible for the NEAs in their updated evidence base, with the analysis requiring assumptions more optimistic than those put forward by the Inspector and a quasi-benchmark of EUV in order to produce results even at the margins of viability.

Indeed as per my MOC/VIA paper and recent hearing statement, any sensitising of the analysis to include (the most) realistic assumptions shows a lack of viability for WOB for example and surely the other sites.

The NEAs (and NEGC) now appear to rely partially on viability having been proven by private sector developers, but it will be clear to all participants (and see my hearing statement comparison table) that no developers have demonstrated viability using anything close to the Inspector's requested assumptions and all of them undercut the already-insufficient (eg RTS) infrastructure costs which are in the Hyas modelling.

If suitable assumptions on delivery rates/contingencies/etc were used in the developer models, unviable outputs would almost certainly be produced – this leads to policy erosion upfront or over time in a private sector delivery context. The claimed viability "confidence" from developers will primarily relate to them knowing that they ultimately have the ability to grind down s106 (or equivalent under a different structure) requirements once the site is allocated, ie their true contingencies are directly at the expense of the development's sustainability.

6. Commercial Conflict of Interest for NEAs

A particularly problematic dynamic is also increasingly prominent in the NEA hearing statements. Their own embedded commercial interest (potential interest farming; funding already "sunk" into NEGC; possible wider government benefits from being a "leader" in the Garden Communities space) gives rise to a critical conflict of interest. This explains why we see them endorsing developers' viability analyses despite the obvious infrastructure shortcomings / issues around policy erosion etc.

It is not an understatement to say that this factor appears – based on the hearing statements – to have corrupted the NEAs' approach to and perspectives on deliverability and viability; certainly the lack of objectivity is marked.

Matter 5 Detailed Responses

Below specific comments from the NEAs and NEGC are addressed:

Reference	**NEAs** *(summarised where required)*	**Response**
5.7.1	*"there can be no legitimate suggestion that the identification and subsequent allocation of a garden community in a development plan gives rise to State Aid"*	Allocation of housing land cannot in itself create State Aid problems, but the resulting inevitable economic activity required for delivery can. NPPF requires deliverability to be proven and clearly here this involves demonstrating that required key economic activity is not illegal.
5.7.1	*"It is noted that State Aid has never been a reason for a Local Plan or a development plan proposal to be found to be unsound"*	As per overview, it is clear that this is a legitimate soundness concern for the Inspector and many other participants.
5.7.1	*"If the private sector deliver the garden communities there can be no legitimate issue about State Aid"*	Correct, but as per overview, there is no private sector evidence which shows viability with a realistic chance of policy compliance.
5.7.1	*"The NEAs have been advised that State Aid compliant mechanisms can be designed"*	Indeed. But the Inspector's question (and my own concerns) are rightly whether State Aid compliant mechanisms would then be viable. Note this answer is also relevant to 5.7.6 and 5.7.9 which contains similar NEA assertions.
5.7.1	*"All advice to the NEAs is that a public sector master developer would be able to access finance at a rate of 6% or less. That advice all takes account of State Aid issues."*	See overview about lack of positive/meaningful evidence regarding finance rate and the relevance of underlying detail to indicative rates.
5.7.3	HIF funding is State Aid compliant unless proven otherwise	HIF rules are very clear that Councils must themselves ensure State Aid compliance – HIF award does not imply compliance.
5.7.5	*"The NEAs are confident, based on the advice received, that the expenditure of the HIF funding will be in accordance with State Aid requirements"*	Please provide legal advice or summary thereof.
5.7.6	*"As explained in that document, the PwC report is historical and was never used to inform the Local Plan process"*	This may be why the Plan has not appropriately considered State Aid.

5.7.6	*"It [PWC report] was never part of the Local Plan evidence base relied upon by the NEAs"*	Report is clearly of relevance as Inspector cites.
5.7.8	*"Contrary to Mr O'Connell's assertions, to the extent that it is necessary, the NEAs have meaningfully considered the State Aid implications during the preparation of the Section 1 Local Plan"*	As per overview, this is incorrect – not an NPPF compliant approach.
5.7.9	*"As noted, the Section 1 Local Plan is delivery model blind. The NEAs recognise and acknowledge that State Aid issues will need to be considered when the detailed delivery arrangements are decided. Doing so now, in advance of a decision being taken on those detailed arrangements, would be premature."*	As per overview this is not an NPPF compliant approach. Once site has been allocated it is too late to then turn attention to a key aspect of deliverability.
5.7.10	*"All local plans, no matter the quantum of housing that it provides for, are assessed against the same soundness test. The Section 1 Local Plan is not subject to any additional or enhanced soundness test. In that context it is relevant (as noted in EB/085) that State Aid rarely arises in relation to a policy or plan-making unless aid is a direct and inevitable consequence of the policy."*	As per overview, NPPF requires proportionate evidence to demonstrate deliverability (among other things). This is a key pillar of the soundness test. This is clearly not an "average" local plan. A consideration of State Aid at this juncture is clearly appropriate and proportionate.
5.7.11	*"Obviously the nature of the evidence base is likely to vary depending on the substance of the plan in question. Mr O'Connell considers that EB/085 does not provide a sufficiently full and precise evidence base."*	See 5.7.10 response above.
5.7.12	*"It is not proportionate to expect the NEAs to set out for each potential delivery mechanism how the State Aid implications can be addressed. Instead it can, properly, assume that State Aid implications (if any) will be considered by the relevant body at the time decisions are being made about delivery vehicles and*	The NEAs could of course review different structures to find the most appropriate one from various perspectives including State Aid. This would indeed be NPPF compliant as it would give certainty around delivery where presently this is lacking. Currently – again as per overview – there are

	financing. The evidence base prepared by the NEAs in the form of the position statement is adequate and proportionate."	concerns from the Inspector and other participants including myself that the Plan is not deliverable without illegal State Aid. This has not been addressed adequately either directly or through positively prepared and meaningful evidence on finance rate / viability. This is not NPPF compliant. Note that the NEAs were perfectly entitled to specify a delivery mechanism and this could have simplified the Plan greatly and demonstrated deliverability. The lack of NPPF compliance is in part a direct function of their failure to do so. I reiterate my grave concerns that the key reason a delivery mechanism has not been specified is because one has not yet been found which will ensure policy compliance and appropriate (eg robust under Harman guidance) confidence around viability.
5.8.2	*"If the garden communities are delivered by the private sector then the evidence from the developers is that the financing costs included in the Viability Assessment Update are appropriate. On that basis a rate of 6% to borrow for investment is considered realistic."*	See overview
5.8.3	*"It is noted that if the NEAs or the LLNTDC develop then they could be using CPO powers to acquire the land. That will provide a significant asset base and will be security for any debt financing that is required. As noted above, the acquisition cost of that land will reflect the "no scheme world". The land once assembled will have a marriage value, even taking account of the full policy requirements, likely to be in excess of the acquisition cost. That security would assist in ensuring that interest rates are kept at or below the modelled rates."*	Serious doubts expressed by most examination participants about ability to CPO given willing developers with similar plans. No positively prepared, meaningful evidence to support this statement. My professional experience is that lenders take particularly credit-negative views on timing uncertainty, legal uncertainty and delivery uncertainty, all of which would result from a CPO-based approach. AY modelling still shows land CPOed in parcels over time and therefore my points in MOC/STA and MOC/VIA around lack of credit quality would still apply.

Note: only meaningfully incremental NEGC comments included		
Reference	**NEGC** *(summarised where required)*	**Response**
Q1.	*"Public Sector leadership, with associated statutory powers, is the preferred way in which the NEA can proactively ensure comprehensive delivery of the garden communities rather than reactively monitor private sector delivery of parts of the proposed communities"*	Not aligned with NEA's claim that Plan is delivery mechanism blind. This has implications for much of NEGC's paper. In this context, note also Colchester Council's recent decision to stop funding of NEGC
Q7.	*"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 principal 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"*	The AY modelling suggests to the contrary, with unrealistic interest rates, even allowing for the overly optimistic modelling (high delivery rates, low contingencies etc). There is no evidence providing certainty around the lower interest rates or viability of this high-level structure.
Q7.	*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*	Incorrect. See earlier response.
Q8.	*"NEGC Ltd has been working with Homes England to explore a range of long-term infrastructure fund options involving pension funds and Government funding. NEGC Ltd undertook some soft market testing with a range of financial institutions/pension funds at the end of 2018 and identified that there is an appetite in the market for the provision of long-term finance. Indeed, conversations with Homes England have identified that in their experience of providing State Aid compliant funding for large scale*	For market "soft sounding" (very early stage discussions with investors, usually little detail involved) to be meaningful in an Examination context, NEGC would need to submit the investor presentation used (to see business plan) and reports of the feedback and further information required by investors. Otherwise this is simply no better than hearsay. See overview for comments on detail being all-important for ultimately approved finance rates.

	mixed residential and commercial developments rates of 6% or less are common place"	
Q8.	*"Finally, as mentioned above and in our evidence elsewhere, NEGC Ltd can confirm that it is exploring public/private partnerships with and without the use of CPOs and is confident that it can achieve finance rates of 6% or less for either scenario"*	See above answer – no meaningful evidence / detail all-important / otherwise hearsay.

Matter 7 Detailed Responses

Below specific comments from the NEAs and NEGC are addressed:

Reference	**NEAs** *(summarised where required)*	**Response**
Intro	*"a number of scenarios have been tested which enable consideration to be taken as to whether the proposals can be considered viable and deliverable, and that they would generate competitive returns to landowners and developers"*	See my hearing statement regarding a lack of meaningful sensitivities – the scenarios tested in the evidence base are not even the logical ones which would result from the Inspector's letter.
Intro	*"A considerable level of detail has been provided as background evidence base. This is materially greater than that which is generally available or required to consider and demonstrate viability at this stage in the plan-making process"*	See Overview re proportionate evidence.
Intro	*"The viability approach, to consider residual land values by comparing scheme costs and values is well understood and used to support viability testing at plan making stage"*	DCF was also requested, specifically driven by the highly unusual (and risky) structure of buying land over time. There is no explanation anywhere of why this was not provided despite clear consultation responses and hearing statements pointing to this.
7.1a.5	[re WOB 10k modelling] *"Similar conclusions can be drawn in terms of the overall viability of a*	My conclusions on this output are the same as for 12.5k – viability is at best marginal, contrary to Harman guidance.

	scheme solely within Braintree District in that this provides a sufficient return (premium) to landowners and is considered viable in planning terms”	
7.2.6	*“The cost items of most significance flagged in representations relate to transport items and in particular relationships between the cost and provision of the Rapid Transit System”*	See my Matter 6 Hearing Statement Response for a clear explanation of why RTS costs included are entirely inadequate.
7.3g.8	*“The VAU is applying profit allowances to the purchasers of clean, serviced development plots, therefore minimising risks or capital intensive requirements which are factors which would generally support higher expectations.”*	The Savills report on developer profit is clearly relevant here – it is not just complexity of project, but also long term nature and the risk inherent in that aspect. Please also see comments in MOC/VIA regarding the overall developer profit % GDV also – this is hugely understated and there can be no such argument as to the relevance of the Savills report for the “consolidated” profit metrics.
7.3j.10	*“Mr O’Connell sets out concern over the application of inflation. His view is that any stakeholder* “sees inflation over the long term solely as an economic risk” and that “the idea that inflation can in any reliable fashion create value or help to justify the soundness of a large-scale project is absurd”. *This view is contrary to how the property market has actually operated as evidenced by historic trends in value growth.”*	My comment is based on long-term professional experience including relating to inflation risk management. While historical trends have some relevance, every economic cycle (and sub cycle) is different. My use of the term “in any reliable fashion” indicates that while a trend could hold across a long term future time horizon, this is hugely uncertain. The NPPF requires proof of deliverability and relying on inflation to “make the numbers work” is patently an unsound approach to Plan making.
7.3j.17	*“As set out in the VAU the inflation scenarios are presented merely to provide an illustration of the importance of inflation to viability.”*	This is not really accurate – the NEAs are showing unviable or marginally viable results without inflation so the inflation-adjusted figures are clearly intended to “plug” this viability gap in a meaningful way. If the viability numbers “worked” would the NEAs have included the inflation scenarios despite the Inspector saying they would not be helpful?

7.3j.17	*"Given the timescale of delivery of the Garden Communities it would be erroneous to ignore inflation completely."*	On the contrary, it is the long term nature of the GCs which makes the inclusion of inflation particularly meaningless from a perspective of proving deliverability as required by NPPF.
7.4.11	*"Neither Mr O'Connell or CAUSE define what specific or additional risks apply to each item of infrastructure to justify higher rates across everything, or what international standards exist (of direct relevance to the specific proposals) that clarify or justify rates for contingencies beyond those tested in the VAU."*	CAUSE have clarified this point previously and may do so again, so I will not repeat the points here. It will suffice to reiterate that the large scale and long-term nature of the sites clearly necessitates extra caution around contingencies – an average 40% across line items seems appropriate (indeed not overly conservative) at this stage of planning.
Q5 (all points)	Consideration of finance cost	Please see Overview and responses to Matter 5
7.5.11	*"It is not possible at this stage in the process to be precise about such influences or the outcomes of any commercial negotiations. The NEA take the view that to model additional scenarios would require an additional layer of assumptions to be adopted which would be highly variable and add complexity to what is already a complex and comprehensive set of scenario tests"*	Varying the finance rate and producing a simple sensitivity table would not be complex in any way. It is probably the single most obvious assumption to show scenario tests for, especially for a long-term project. As per my hearing statement, the scenarios shown by the NEAs are far from "comprehensive". Indeed, there must be no doubt: the NEAs have not included higher finance rate as a scenario because it would emphasise exactly how sensitive viability is to this input.
7.7.9	*"Overall the NEA consider that a reasonable and pragmatic approach has been applied to the phasing of land purchases in the VAU."*	My professional modelling experience leads me to observe that an approach which all participants agree is not achievable in a real-world context can be described neither as reasonable nor as pragmatic.
Q9	Consideration of CAUSE's inflation critique	The clearly inadequate answers from the NEAs to this question further emphasise how inappropriate inflation scenarios are in the context of assessing viability.
7.10a.21	*"The NEAs are not required to define any specific benchmark by national policy or guidance"*	Harman guidance (which is quoted by the Inspector himself in his letter) emphasises the importance of benchmarks (p30-31). See MOC/VIA and my hearing statement for more

		on this point.
7.10a.21	*"The VAU includes sufficient information to show a range of residual land values that enable a judgement to be made as to whether the proposals demonstrate 'competitive returns'."*	The VAU actually draws conclusions that the GCs are viable despite no benchmark or evidence supporting such a judgement.
7.10a.21	*"Likewise modelling by the promoters of the GC sites all demonstrate the ability to achieve competitive land values."*	See Overview including comments on Commercial Conflict of Interest
Note: only meaningfully incremental NEGC comments included		
Reference	**NEGC** *(summarised where required)*	**Response**
Q2	*"The timing adopted by NEAs is materially front loaded and provides for the delivery of services, capacity and community facilities in tandem with or in advance of its need."*	See my Matter 6 Hearing Statement Response, for example
Q3	*"The data show that house prices have consistently outstripped build costs. That analysis provides significant additional confidence that the proposed developments will be viable."*	See above comments regarding inflation – there is no confidence to be extracted from inflation-based analysis in this context.
Q5	*"The figure applied by Hyas, 6%, is in line with market practice. Our view is that this is a sensible rate to be applied if the development is privately led, although some master developers will be able to access funds at lower rates. If the proposal is public sector led then our view is that a lower rate is likely to be achieved."*	See responses on Matter 5 above.
Q9	*"Typically, sensitivity tests will be run applying different rates around the central assumptions."*	Indeed. It is therefore surprising that neither the NEAs nor NEGC have run sensitivity analyses on the key assumptions. See my hearing statement for the relevance of this.
Q10a	*"Land prices have to adjust to proper planning policy requirements and provided that there is a reasonable margin above existing market values (which includes hope value), if necessary in a "no scheme world",*	There is a large gap between this theory and the land being offered for development in practice. This is why Harman guidance emphasises the importance of working with local partners and building a credible evidence base around

	then development should be considered viable."	a benchmark land value. This is a significant shortcoming of the NEA/NEGC approach to viability for this Plan and ultimately means it is not NPPF compliant because Delivery is too uncertain.
Q10a	*"The Hyas work demonstrates sufficient levels of returns when considering the nature and scale of the sites concerned."*	On what basis does it do so? All evidence presented from developers and precedents eg Welbourne show that the returns demonstrated by the Hyas work are insufficient (even before marginal viability and lack of sensitivities are considered). NEGC offer nothing to support such a bold statement.