

North Essex Authorities

Mr Roger Clews
Planning Inspector
Examination Office

Sent by email1st April 2019

Dear Sir,

Re: NEAs' March update on Local Plan progress

1. Further to your request for monthly updates we enclose the NEAs' March update on Local Plan progress for your information. We can confirm that the project remains on track to deliver on the previously advised timescale.
2. We advised you in our letter of the 1st March that we would be providing you with a refined methodology statement on the Additional Sustainability Appraisal for you to review. Our consultants, LUC, have advised us that minor changes to the methodology of the SA are necessary to reflect the evolution of the process including amendments resulting from feedback from the recent consultation and further engagement with stakeholders, including the check and challenge workshop, held on 29th March.
3. As you have previously advised, the objectivity of the Sustainability Appraisal is fundamentally important and as such we believe it is appropriate to follow LUC's recommendations and remain open to minor changes in the methodology of assessing alternatives. A copy of the updated methodology will follow in a further update. The final draft of the SA will also contain the full methodology used and will be subject to further public consultation when published alongside the rest of the evidence base later this year.
4. The NEAs have commissioned Leading Counsel, Christopher Lockhart-Mummery QC, to advise on two legal issues. First, the NEAs asked him to review the Opinion prepared by Martin Edwards on behalf of CAUSE. We attach a copy of Leading Counsel's Opinion. Second, we have asked for a review of the Sustainability Appraisal process to date, which review will address the Regulation 12(5) point previously raised by Pegasus on behalf of Lightwood Strategic. Leading Counsel has been asked to take account of all work to date, up to and including the outcome of the recent workshop. The Opinion will be available shortly.
5. As previously stated, we would appreciate any comments you may have on the content of this update. If you do have any comments, then please get in

touch via the Programme Officer and we will be pleased to respond to any queries.

Yours sincerely,

Emma Goodings – Braintree District Council

Karen Syrett – Colchester Borough Council

Gary Guiver – Tendring District Council

NEAs' March Update

Issue identified in 8 th June letter (with paragraph number(s))	Summary of the NEAs' approach to addressing the identified issue	Update on progress
A120 improvements (para 37)	Further evidence on the funding mechanism for A120 improvements will be sought from the Department for Transport (DfT) to provide more certainty over their deliverability. Additionally, the NEAs will submit details of Essex County Council's (ECC's) favoured route option which was announced in June 2018.	Following the receipt of the letter from DfT previously reported to you, the NEAs now await the announcement on RIS2 later this year.
A12 improvements (para 37)	<p>Feasibility work on alternative rerouting of the A12 is taking place as part of the Housing Infrastructure Fund (HIF) process. ECC is leading the HIF bid related to A12 improvements on behalf of the NEAs. Following on from the initial shortlisting for funding, ECC has now submitted the business case to MHCLG.</p> <p>In addition to the HIF process the NEAs are working closely with Highways England in planning route options for the A12 which take account of the proposed Colchester Braintree Borders Garden Community.</p>	<p>ECC has now submitted the two HIF bids relevant to the Garden Communities to MHCLG, namely:</p> <ul style="list-style-type: none"> • Improvements to the A12 which would facilitate the development of the Colchester Braintree Borders Garden Community; and • A new link road between the A120 and A133 and Rapid Transit System infrastructure to support the Tendring Colchester Borders Garden Community. <p>The NEAs now await MHCLG's decision on these funding applications.</p>
Rapid transit system (RTS) (paras 38-43)	<p>The NEAs will commission further feasibility work on the proposed North Essex RTS. This work will address the specific points raised in your 8th June letter at paragraphs 42 and 43, namely:</p> <ul style="list-style-type: none"> • determining which modal option is to be used and its capital cost implications; 	<p>Work on the North Essex Rapid Transit System is continuing, and the study remains on schedule. This work has benefited from the Rapid Transit System aspect of the relevant HIF bid.</p> <p>Additional work by transport consultants continues to be progressed to support the modal</p>

	<ul style="list-style-type: none"> • establishing the feasibility and capital cost of its route(s) on the ground, including its alignment outside the Garden Communities themselves; • refining passenger and revenue forecasts; and • establishing a timescale for its delivery in stages. <p>Additionally, the work will identify the range of costs involved in delivering and providing the RTS, as well as the sources of funding and financing to meet these costs. The NEAs will ensure that potential operators are involved in the development of the RTS proposal.</p>	share targets in the Garden Communities, which also remains on track.
Marks Tey railway station relocation (para 47)	The NEAs will engage with Network Rail and Greater Anglia to understand in more detail the implications of relocating Marks Tey railway station to a more central location in the Colchester Braintree Borders Garden Community. The outcome of this engagement will inform the NEAs' strategy in relation to public transport provision within and around the Garden Community, particularly in relation to the meeting of the modal share targets to which the NEAs are committed.	Alongside working with Network Rail and Greater Anglia on the potential to move Marks Tey railway station, the NEAs have been working to draw up costed plans to improve accessibility at the existing station including better connections for walking, cycling and public transport. ECC has now received a draft report relating to the order of magnitude of works required at the railway station to accommodate future growth. This work is now the subject of discussions between Network Rail and ECC.
Assumed build-out rates (para 53)	NEGC Ltd and the NEAs will commission consultants to look at the assumed delivery rates of housing in the Garden Communities. This work will involve analysis of the demand side of delivery including market absorption rates, as well as the supply side including modern methods of construction.	The NEAs' work on a topic paper on build out rates continues to be refined to reflect additional demand data and comparisons with build out rates across the country. The NEAs also understand that Government will shortly publish its response to the Letwin Review ¹ which will be

¹ *Independent Review of Build Out - Final Report*, Rt Hon Sir Oliver Letwin MP (October 2018)

		referenced in the paper. The topic paper remains on schedule.
Allocation of new builds between Local Planning Authorities (LPAs) (para 54)	The NEAs will agree how housing supply will be allocated amongst relevant LPAs in the event of a shortfall in planned delivery.	The NEAs are currently devising an equitable method of apportioning any potential shortfall in housing delivery at the Garden Communities between the relevant LPAs. This agreement will result in proposed modification to Section 1 of the NEAs' Local Plans.
Viability evidence (paras 55, 64, 66-68, 72-73, 78-80, 83- 86)	NEGC Ltd and the NEA have undertaken significant financial viability work since the Examination hearing sessions took place. Updated evidence will address the concerns raised in your 8 th June letter including the approach to contingency, land purchase costs, affordable housing as well as updating the wider analysis of scheme costs and values.	<p>The NEAs are in the process of preparing viability evidence which takes account of the wider evidence base (and any cost and value implications) to ensure consistency of approach.</p> <p>NEGC Ltd are separately carrying out viability work on the implications of developing the Garden Communities under the evolving locally-led New Town Development Corporation model.</p> <p>Both pieces of work are evolving in line with other areas of the evidence base and both remain on schedule.</p>
State aid (para 70)	The NEAs will receive further advice on the potential concerns raised over state aid implications to the assumed interest rates within the financial viability evidence.	The NEAs have received advice that confirms that their approach to delivery is in compliance with restrictions on state aid. The NEAs will ensure that this advice is reviewed and updated as necessary as the viability evidence evolves and is completed.
Employment forecasting and provision (paras 61, 140-142)	The NEAs will undertake further analysis to consider employment land and floorspace to ensure consistency across the evidence base.	The NEAs have agreed an approach to defining indicative floorspace figures for employment uses for inclusion in the site-specific policies in

		Section 1. The NEAs have received a draft report from their consultants and are in the process of refining this work into a report to be submitted to the Examination.
Infrastructure planning, phasing and delivery (paras 132-133, 144)	The NEAs will commission consultants to look into infrastructure planning, phasing and delivery at each of the Garden Communities. This work will provide further information on infrastructure requirements, cost benchmarking, site capacity analysis and scheme phasing.	<p>The infrastructure planning, phasing and delivery work continues and due to the nature of this work's drawing together of other areas of the evidence base, it will evolve in parallel with them. The recently submitted HIF bids have informed the evolution of this work.</p> <p>In respect of the Colchester Braintree Borders Garden Community, this piece of evidence will ensure that all A12 route options are properly planned for and taken account of in the final document.</p>
Sustainability Appraisal (SA) (paras 119-129)	The NEAs will commission new consultants to carry out an additional SA of Section 1. The revised SA methodology will closely follow the recommendations contained in your 8 th June letter.	Following the consultation on the methodology of the Additional Sustainability Appraisal, the consultant, LUC, hosted the 'check and challenge' workshop on 29 th March. The methodology and approach to the SA will continue to reflect feedback from stakeholders albeit within the parameters you have previously set out.
Habitats Regulations Assessment (HRA) (para 27)	The Section 1 HRA will be updated to take account of the recent European Court of Justice decision ² .	The NEAs have reviewed the legality of the HRA and have agreed the work required with the consultants to ensure it is compliant with the aforementioned case-law. This work has been commissioned and remains on track within the required timescales.

² *People Over Wind and Peter Sweetman v Coillte (C-323/17)* and subsequent related cases.

<p>Delivery mechanisms (paras 85, 87-92)</p>	<p>The NEAs will provide an update to the Examination on the developments which have taken place in relation to the potential delivery mechanisms for the Garden Communities, including locally-led New Town Development Corporations.</p>	<p>The NEAs are in the process of preparing a topic paper which provides further information on the composition and function of potential delivery bodies to deliver the Garden Communities. In particular the topic paper draws together recent advances in the evolution of the locally-led New Town Development Corporations. This topic paper remains on schedule.</p>
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IN THE MATTER OF:

NORTH ESSEX AUTHORITIES

**SUSTAINABILITY APPRAISAL WORK IN CONNECTION
WITH SECTION 1 LOCAL PLAN**

OPINION

Introduction

1. The purpose of this Opinion is to comment on the Second Further Opinion dated 29 January 2019 by Martin Edwards, on behalf of CAUSE. The relevant background is extensive – in terms of time and material – but I seek to distil its essential elements as follows.

Background

2. The NEA's (Braintree District Council, Colchester Borough Council and Tendring District Council) are promoting their emerging local plans. They have been working together to plan for strategic cross-boundary issues across the North Essex area. On 9 October 2017 the NEA individually submitted draft local plans to the Planning Inspectorate for examination. Each of the draft local plans contains two sections:
 - (a) Section 1 which includes policies on strategic cross-boundary issues including infrastructure, housing numbers and proposals for three new Garden Communities (GC's). The drafting of Section 1 is common to all three local plans.

(b) Section 2 which includes individual site allocations and development management policies which are specific to the relevant authority. Section 1 has been, and remains subject to a joint examination by a single Inspector, Mr Roger Clews.

3. Following examination hearing sessions, the Inspector issued a letter dated 8 June 2018, Advice on the Next Steps in the Examination. He expressed himself satisfied as to legal compliance aspects: paragraphs 6-28. The bulk of his letter is devoted to Part 1 Chapter 8, the proposed GC's. He found evidence lacking in relation to transport infrastructure; he expressed concerns in relation to the delivery of market and affordable housing, and also in relation to employment aspects, viability and delivery mechanisms. He also raised concerns in relation to Sustainability Appraisal (SA) aspects: paragraphs 93-129. Specifically, paragraphs 97-103 raised concerns as to the objectivity of the SA assessment. In relation to this point, and in the context of potential further SA work, paragraph 128 advised that "...it might be advisable to consider appointing different consultants from those who conducted the 2016 and 2017 SA reports. This would help ensure that the further work is free from any earlier influence and is therefore fully objective".
4. Paragraph 157 concluded that:

"...I hope it will be appreciated that my findings do not necessarily represent a rejection of their commendable ambitions for high-quality, strategic-scale development in North Essex. Equally, however, the scale of those ambitions, and the long time scale over which any GC proposals would come forward, require that adequate time and care are taken now to ensure that any proposals are realistic and robust".
5. On 27 June 2018 the Inspector issued a further letter in relation to housing requirements, not relevant for present purposes.

6. By letter dated 20 July 2018 the NEA's sought clarification in relation to the Inspector's letters. That led to the Inspector's letter of clarification dated 2 August 2018.

7. By letter dated 19 October 2018 the NEA's set out their views to the Inspector as to the way in which they wish to take forward the examination. In that letter the NEA's:
 - (a) advised that they remained committed to using garden communities principles to secure future housing requirements;
 - (b) noted the concerns regarding the simultaneous bringing forward of the three GC's of the scale proposed and that the updated evidence base will show that any Colchester Braintree Borders Garden Community will be delivered later in the plan period than previously proposed;
 - (c) enclosed a work programme which identified the additional evidence base material that they believe to be required, and a timetable for the provision of that material;
 - (d) advised the Inspector that new independent consultants, LUC, had been appointed to carry out the further SA work;
 - (e) enclosed a proposed scope for the further SA work (termed the Section 1 Additional Sustainability Appraisal Method Scoping Statement); and
 - (f) invited the Inspector's confirmation of the proposed scope and programme for the proposed SA work.

The letter also proposed a monthly report to the Inspector on the work programme.

8. I note that paragraphs 2.15-2.20 of the Method Scoping Statement (October 2018) referred to the CAUSE Metro Town alternative, and indicated a range of measures by which to ensure that such proposal "is fully understood".

9. The Inspector replied to the above letter on 21 November 2018. Among other matters, the Inspector stated (paragraph 11) that he had considered the Method Scoping Statement, and set out certain limited comments on it in a table at page 8 (inviting a response to each of them).
10. The NEA's responded on 30 November 2018. Among other matters, the letter confirmed the extent of intended consultation.
11. The Inspector responded by letter dated 10 December 2018. He confirmed that the amendments that had been made to the Method Scoping Statement (now the December 2018 version) dealt appropriately with his points. He thanked the NEA's for confirming that the proposed consultation on the Statement will include consultation on the proposed revised assessment criteria, and will involve all those who took part in the examination hearings held in January and May 2018. He stated that now all the NEA's proposals for further work on the evidence base and SA have been clarified, it was appropriate to announce a pause in the examination while that further work takes place.
12. As promised, the NEA's have provided monthly programme updates to the Inspector from January 2019 onwards.
13. Meanwhile, Lightwood Strategic (Lightwood) had written to the programme officer on 24 October 2018 raising "a couple of points" (actually, rather more than a couple of points). The letter stated that Lightwood was seeking the advice of Leading Counsel on the points being raised, although no such advice has been provided to the NEA's. So far as immediately relevant, the letter raised two points of alleged bias, on which CAUSE relies.

14. First, reference is made to a meeting held on 17 July 2018, at which representatives of NEGC Limited were present. NEGC Limited is a company wholly owned by the NEA's (i.e. a separate legal entity, which was formed for the purpose of taking forward proposals for the three GC's as a corporate delivery vehicle). The seemingly comprehensive minutes of the meeting show that it was attended by two representatives from Braintree District Council, three representatives from NEGC Limited, and three representatives from LUC. It seems hardly surprising that representatives of the corporate delivery vehicle attended this meeting. I have already noted that the Inspector's concerns in the letter of 8 June 2018 raised significant concerns in relation to viability, transport and deliverability. Despite the prospect of evidence from the delivery vehicle on these topics, the minutes actually record (page 3) that "LUC do not anticipate using this evidence directly as part of the SA process, as the SA will rely on the evidence provided that the alternatives are viable (i.e. deliverable) in order for them to be reasonable".

The minutes later record:

"It was clarified that NEGC's only role in the context of the SA would be to provide evidence to the Council. LUC will communicate only with the Council and not with NEGC directly in order to ensure objectivity".

In relation to the previously noted suggestion of engagement with CAUSE to understand their proposals, a meeting was mooted. The minutes record that a representative of LUC stated "...that we should be careful about giving any particular group special access outside of the formal consultation processes, in order to ensure consistency and objectivity, so this may require further consideration with the NEA's before commencing and a suitable approach agreed with the Inspector".

15. In my opinion, these minutes show a highly professional and objective approach by LUC (and indeed by Braintree District Council). They could not be the subject of any fair criticism on the grounds of pre-determination or bias (in which I include the appearance of bias). They amply support the terms of paragraph 2.6 of both the October 2018 and December 2018 versions of the Method Scoping Statement, as follows:

“A meeting was held with the North Essex Authorities on 17th July 2018 to introduce the LUC team, and to ensure expectations of both parties are clearly understood from the outset and discuss further details of the additional SA work. This meeting provided an opportunity to:

- Discuss the background to the additional SA work to ensure that it is clearly understood.
- Reflect upon the SA process undertaken to date, and any lessons learned.
- Discuss the evidence sources that are available.
- Discuss the nature of the spatial strategy options requiring appraisal, including work awaited from consultants on reasonable options for each of the proposed Garden Communities and whether urban extensions need to be considered as a separate option.
- Agree any changes to the LUC proposed method if necessary.
- Discuss stakeholder and public consultation arrangements.
- Confirm the project programme and initial deadlines and discuss risks to the timetable, including inputs to the SA and when these are required from other pieces of evidence.
- Confirm project management, contractual and invoicing arrangements”.

16. The second allegation of impropriety in the Lightwood letter relates to marketing material presented at a MIPIM meeting on 17 October 2018. I refer to this further below.

The CAUSE Opinion

17. The CAUSE Opinion makes a number of assertions (many of which are drawn from the Lightwood letter). They can be grouped under the following headings.

Disregarding the Inspector's comments (paragraphs 2 and 29)

- (1) As noted above, the NEA's have been in dialogue with the Inspector to make sure that the procedure and approach being adopted meet his requirements. Acknowledging the ambition and complexity of the local plan proposals in this case, I have not experienced such a degree of methodical engagement with an examining Inspector's guidance as is happening in the present instance. The engagement has included:
 - (a) providing the Inspector with the SA Method Statement;
 - (b) modifying the SA Method Statement to address the Inspector's comments;
 - (c) consulting on the SA Method Statement;
 - (d) meeting with stakeholders to understand more fully their proposals; and
 - (e) providing monthly updates to the Inspector on the progress of the SA work.

Pre-determination (paragraphs 7, 9, 11, 12, 13, 22, 23 and 28)

- (2) I have already referred to this in some detail. The marketing activity at MIPIM was carried out by NEGC Limited, not the NEA's. While NEGC Limited have a vested interest in the matter, this is not evidence of any level of pre-determination or bias by the NEA's, let alone by LUC. The NEA's remain committed to using garden community principles to secure future housing requirements in their area. In my view, it is quite inappropriate to suggest that the NEA's or NEGC Limited, as their corporate delivery vehicle, cannot issue material that reflects that strategy.

Viability (paragraphs 27, 28)

- (3) The CAUSE Opinion suggests that the GC's may not be viable (paragraphs 11 and 28). This is hardly a new contention. It was extensively debated at the examination hearings. The Inspector expressed detailed concerns on this count in the letter of 8 June 2018. It will be incumbent on the NEA's to produce further evidence of viability, and that evidence will doubtless be rigorously tested in due course. The evidence will be reviewed by the NEA's, published for consultation and be the subject of scrutiny in the examination.

Transport (paragraphs 24, 25)

- (4) The CAUSE Opinion suggests that the Department for Transport letter (undated) does not demonstrate the necessary commitment to the A120 widening. It seems to me that the letter is cautiously encouraging. It recognises that although no investment decisions have yet been taken in relation to RIS2, the scheme is more developed than most other competing proposals. That letter was shared with the Inspector, and put into the public domain, as part of the January 2019 progress report. It will ultimately be for the Inspector to decide whether the strategic infrastructure is sufficiently committed for Section 1 to be found sound. This is plainly a soundness point, and not related to the SA process.

Rapid Transport System (RTS) (paragraph 26)

- (5) This, again, raises no legal issue. The NEA's will doubtless have to submit evidence to the Inspector to seek to demonstrate that RTS can

be delivered (physically and financially) and will achieve the desired modal shares. Again, this is a question of soundness, i.e. planning judgment.

Inadequate consultation (paragraphs 13-23)

- (6) It is important to note what is being said - and not said - in these paragraphs. It is not being contended that there is any breach of any statutory requirement relating to the preparation of a local plan. The Opinion merely notes the requirement under section 19(3) of the Planning and Compulsory Purchase Act 2004 and general principles relating to consultation processes. The Opinion cites extensively from well known authorities. The contentions all revolve around the alleged “closed mind” approach. I have addressed these points above, and see no need for repetition.

It is also important to note that the ongoing consultation relates to the new SA review process, not to changes to Section 1. Depending on the outcome of the SA process there may need to be further consultation on Section 1 changes. There will also be consultation on the additional evidence that is being prepared in response to the Inspector’s findings. I assume that such consultation will be carried out in accordance with each authority’s Statement of Community Involvement. That material will then be the subject of scrutiny at a re-opened examination.

Legal Opinion (paragraph 5, paragraph 8 in relation to the definition of schemes in the SA; paragraph 11 in relation to SA issues, paragraph 28)

- (7) The Opinion suggests that the NEA’s require an “independent legal opinion”. It raises the “prospect” that there are technical legal issues

that have been overlooked (see paragraph 12). No further details are given. As noted above, there is no claim of any breach of any statutory requirement. I have already addressed matters relating to “closed mind”. The NEA’s have throughout had the benefit of specialist legal advice, and have acted in accordance with such advice.

Conclusion

18. For the above reasons, it is my view that there is nothing in the CAUSE Opinion which should lead the NEA’s to change their present course, and intended course, in the promotion of the local plans.

Landmark Chambers
180 Fleet Street
London EC4A 2HG
21st March 2019

C. LOCKHART-MUMMERY QC

IN THE MATTER OF:

NORTH ESSEX AUTHORITIES

**SUSTAINABILITY APPRAISAL WORK IN
CONNECTION WITH SECTION 1 LOCAL PLAN**

OPINION

**Dentons
(KSES/SJA)**

Our Ref: CLM-