IN THE MATTER OF THE NORTH ESSEX AUTHORITIES
Joint Strategic (Section 1) Plan Examination

AND IN THE MATTER OF CAUSE

AND IN THE MATTER OF SERCLE

OPINION

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1. I have been asked to provide an Opinion to CAUSE and to SERCLE regarding certain legal issues arising out of the North Essex Authorities Joint Strategic (Section 1) Plan the examination of which is due to commence on Tuesday 16 January 2018 and at which both CAUSE and SERCLE will be attending. The issues on which I have been asked to provide an Opinion revolve around the question of deliverability and can be briefly stated as (i) the existence and use of compulsory purchase powers and compensation; (ii) the human rights implications; and (iii) any resultant delay/uncertainty. They are, to a great extent, interrelated. It will also be readily appreciated that the first of these issues is fundamental and from which the other two issues naturally follow.

Background

2. In preparing this Opinion I have examined a considerable amount of documentation produced by the North Essex Authorities but I have limited reference in this Opinion to those that are of immediate relevance to these issues. I am slightly concerned that some documents that are in the public domain and emanating from the Councils appear to be slightly at odds with the Plan as submitted for examination. There may be a rational explanation for this and I would expect that the Inspector may well address this concern during the course of his examination and so I do not propose to comment further on this in this Opinion. In addition, as I have already explained to those instructing me and

based on my experience elsewhere, it is always useful to examine in detail, the chronological order in which the various documents have emerged so as to discover the true policy evolution of the Garden Communities proposals. There are a number of reasons why it is reasonable and sensible for so doing. In particular, it demonstrates the context in which the significant decisions were taken. Further, it demonstrates the considerations that were material to the decision-maker at the time the relevant decision was taken – a point of special significance in considering issues surrounding the Strategic Environmental Assessment of the Plan. Finally, it limits the opportunities for *ex post facto* rationalisation of decisions already taken. Nevertheless, I shall leave that exercise to those instructing me although I would be surprised if the examining Inspector were not to undertake a similar exercise as it goes to the heart of the question of the soundness of the Plan.

3. According to the official website, North Essex Garden Communities Ltd ("NEGC") was set up in 2017 (whilst it was initially incorporated in 2016, the relevant directors and other officials were not appointed until 31 January 2017) to take forward proposals for three new garden communities across North Essex built in accordance with so-called Garden City Principles. The origin of this policy is very recent, stemming from the invitation by Government on 14 April 2014 for the submission of proposals for new "garden developments' across the UK as a way of tackling the housing crisis. It is stated on the North Essex Garden Communities website that "Recognising the opportunity to provide housing in a different way and the increasing impact of piecemeal housing tagged onto existing villages, Braintree, Colchester and Tendring Councils along with Essex County Council joined together to put forward plans for three new garden settlements to be built to Garden City Principles." It appears, therefore, that these plans are less than three years old. The website also states that: "Committing to an 'infrastructure led' approach, the plans would see the councils take control of the land enabling them to "capture" the increase in land value to then invest back into the community – **a model which while not often seen in the UK has provided successful in a number of newly created communities around the world**". I have highlighted this aspect because it raises important issues. It must be

remembered that it is unwise to rely, in support upon newly created communities elsewhere in the world without a detailed comparative examination of the factual, legal and policy frameworks that underpinned the creation of those new communities. This comment alone should be sufficient to raise a warning flag. The fact is that the chosen delivery model does not have any statutory legal basis or framework to underpin it. This is significant because it opens the door for third party legal challenges by, for example, an aggrieved landowner or by an interest group.

The key element of NEGC and issues of deliverability

4. The report covering item 7(i) taken to the Cabinet of Colchester Borough Council on Wednesday 30 November 2016 ("the Report") also provides illuminating background material and pertinent comments. Those of immediate relevance are set out below and I have highlighted certain passages that appear to resonate with the issues in this Opinion:

(a) The key elements of the approach is stated in the Report's Executive Summary to be

- A company – North Essex Garden Communities Limited - owned equally by the four Councils to oversee the project across North Essex and to drive the delivery of the three planned communities.
- Legally binding deals with local landowners to secure a share in the land value which will arise from the development in return for the Local Delivery Vehicles providing early infrastructure for the developments (with the infrastructure costs being paid for in due course from the land sales).
- A Local Delivery Vehicle for each of the planned Garden Communities with Council, landowner and independent membership and with the clear purpose of delivering the Garden Communities. (Colchester Braintree Borders Limited and Tendring Colchester Borders Limited).
- Clear Masterplans for each Garden Community to be developed.

(b) Paragraph 1.1 of the Report instructs Cabinet members: "To note the external legal advice received that these decisions cannot and do not prejudge the outcome of any future decisions that the Council may make about the Local Plan to be made by Council in relation to the allocation of any Garden Community."

(c) Section 4 of the Report sets out in the Background Information a potted history of the evolution of these proposals:

- 4.1 In the work being carried by Braintree District Council, Colchester Borough Council and Tendring District Council on their respective Local Plans, the potential for new major developments in the form of new 'garden communities' has been identified by the Councils as planning authority as a means of meeting future growth requirements. These include three potential new settlements. One crossing the administrative boundary of Tendring and Colchester in the vicinity of the University. The second crossing the administrative boundary of Colchester and Braintree at Marks Tey. The third site is on land to the West of Braintree on the Uttlesford District Council border.
- 4.2 **In accordance with the duty to cooperate, the District Councils are working closely with each other and are at similar stages in their respective Local Plan preparation, to plan effectively for the long term. All three councils are also working with Essex County Council**. As part of this process, all four Councils are thinking strategically, are not being restricted by current local plan making time horizons and are considering whether Garden Communities could address some of this long term need both within the plan period and beyond.
- 4.3 As part of the development of their Local Plans the three District Planning Authorities have included the three projects as areas of search within their Preferred Options Consultations under the Local Plan. These consultations occurred over the summer and will lead to recommendations to the respective Councils in January / February 2017.
- 4.4 At its meeting on 27 January 2016 Cabinet agreed to the continued joint working and development of proposals for the four Councils to take an active role in the development and construction of the new garden settlements. Following this Council has commitment a further £250,000 to support the joint work and funding was agreed together with a grant from the Department for Communities and Local Government ("DCLG") of £640,000.
- 4.5 This joint working has continued with the work undertaken by the Shadow Delivery Board and the Steering Group, these structures will be superseded by the arrangements in this report once they come into effect. Officers from the four Councils will continue to meet during the early stages of implementation as partnership officer groups to aid transition and ensure continuity.
- 4.6 **Separate negotiations have occurred with landowners and developers with interests in the three sites, this has been supported by consultants engaged jointly by the four Councils.**
- 4.7 This report seeks Cabinet approval for the Council to enter into joint arrangements with the other Councils to create an overarching body to be known as North Essex Garden Communities Limited (NEGC) to coordinate the development of the sites. NEGC will establish a further company (a Local Delivery Vehicle (LDV) for each proposed garden community. The Council is asked to give and in principle agreement that it will provide proportionate funding to the LDVs in its area. This funding will be used to pay for delivery of the infrastructure in a more timely and co-ordinated way which is not available in a traditional development. The cost of infrastructure will be repaid out of land value as the scheme is developed (referred to as a "waterfall repayment" on which more information is provided under the financial section of this Report).
- 4.8 **The decisions in this report do not commit any Council to allocate any sites within the Local Plan. A separate decision making process will be undertaken by the three Local Planning Authorities in accordance with the statutory requirements and material considerations at the relevant time**.

5. It can be seen from the above that the Garden Communities' proposals emerged after the three Councils had already begun their separate processes of individually producing new local plans – see 4.1 of the Report. The statutory duty to co-operate appears to have been limited to co-operation between the four councils (Braintree, Colchester, Tendring and Essex). There is no indication that there has been, as at November 2016, any cooperation with other neighbouring

local planning authorities and others such as the main utility and transport infrastructure providers. On its own it must raise questions about how strategic this Plan actually is and whether the authorities can satisfy the Inspector that the statutory duty to cooperate has been fulfilled.

6. The position is compounded by paragraph 5.1 of the Report which notes: "Addressing growth at any spatial scale must be founded on a clear vision of how and where change should occur. Braintree, Colchester and Tendring are all in the process of evolving new Local Plans to address future need with Preferred Options published by all three Councils in summer 2016. The Councils are thinking strategically for the long term, and are not being restricted by current plan making time horizons or administrative boundaries."

7. Earlier paragraph 6.4 of the Report states: "The approval of the Local Plan has its own statutory process. Each of the Local Planning Authorities will be considering the Pre-Submission Draft of the Local Plan in the New Year."

8. Viewed in this context it raises questions about whether the Plan has been properly subjected to Strategic Environmental Assessment, if at all. I understand that, for example, LUC prepared a Sustainability Appraisal scoping report for the Braintree District Local Plan in December 2014 which pre-dates these proposals. The main report was then produced in June 2016. It is noted in paragraphs 1.16 – 1.20 of that report that it was part of the SEA process (and also recognised its legal significance) and that the process was on-going. Moreover it was only undertaken in connection with Braintree alone. It would appear that despite this there was a clear change of policy direction in that by the time of its publication the four Councils had decided to embark on the Garden Communities proposal. This is clearly evidenced by the difference in approach set out in the Braintree Local Plan Update 2 (December 2015) which makes no mention of the Garden Communities and focusses only on the emerging Braintree Local Plan and the Braintree Local Plan Update 3 (June 2016) which mentions the biggest sites proposed for allocation but without any reference to the means of delivery of those sites and still in the context of the Braintree Local Plan.

9. On this issue of deliverability, the Report states in section 7 under the heading "Delivery Models" the following relevant points:

- 7.1 In order to give the Councils as planning authorities and the public confidence that the communities will be delivered as intended it is proposed that the public sector will take the primary responsibility – setting up and funding a local development vehicle that will enter into agreements with landowners and secure the necessary infrastructure.
- 7.2 **It is accepted that delivery in this way and at this scale is untested since the delivery of New Towns. However, the Councils have taken advice which has confirmed that the approach is feasible, viable and lawful.**
- 7.3 The Councils have considered a wide range of alternative delivery mechanisms and structures.
- 7.4 The principal alternatives would be to allow for the development of the settlements by the private sector or as part of a public/ private joint venture. Neither alternative approach can offer the same level of confidence that over a development programme of 30 years that the garden community objectives will be met throughout different economic cycles.
- 7.5 The proposed approach offers sufficient certainty about ambition and delivery to justify the identification of the broad locations for, and size of, the proposed garden communities. On the basis of the present evidence the other approaches cannot offer a similar level of confidence and are therefore not being pursued.
- 7.6 The projects will take in the order of 30 years to deliver; infrastructure which supports the development of the whole project will necessarily have a long payback period, the public sector is well placed to act as a patient investor taking a long term approach to payback enabling higher levels of investment at early stages.

10. I would draw particular attention to paragraph 7.2. No further information is provided as to the nature and scope of that advice but as it relates to the key issue of deliverability this should be a matter of concern to all

11. . Moreover, it also acknowledges that "**delivery in this way and at this scale is untested**". (It would also appear that there is wording missing from the first sentence as the words following make no sense). Furthermore, this paragraph also indicates that any legal advice that it has received has been in the context of an untried and untested legal mechanism and therefore must be treated with extreme caution in the absence of detailed legal advice. In my opinion reference in the Report to the Localism Act 2011 and to the general power of competence is misguided in the context of NEGC and the proposals for the delivery of the three Garden Communities. It does not avoid the fact that there is no statutory legal basis for the establishment of NEGC and the Local Delivery Vehicles ("LDV").

12. Section 8 of the Report details how the Councils intend to gain control of the land. The key consideration appears to be set out in paragraph 8.4 which states: "Although the LDV will only be in a position to deliver the project if it makes a suitable deal in relation to the land, there is no obligation on the LDV (or the Councils) to accept a deal on any terms. If it becomes unviable for the proposed development to proceed then the LDV has the ability to decline to take the offered deal. Should a commercially realistic deal which meets the Garden Community principles not be achieved then this will create risk for the landowner in showing that the site can be viably delivered under the Local Plan resulting in it not being included in the final adopted plan." This paragraph clearly suggests that decisions on site allocation in the Local Plan are to be driven by financial rather than planning or environmental considerations. It does not, however, suggest how the Councils will handle key sites where the landowners do not wish to sell their land or participate in the Garden Communities proposals. The suggestion that the land will not be allocated in the final adopted Plan reinforces the implication that these proposals are driven by financial considerations and that landowners will be held to ransom by the planning process. If this proves to be the case then the relevant local planning authority could be open to legal challenge on the basis that a decision was tainted by bias, took no account of a material consideration (see paragraph 18 below) or otherwise acted in breach of the Human Rights Act 1998. It is in this context that I am asked for an Opinion on the possibility of the Councils, NEGC or the individual LDV making use of compulsory purchase powers.

13. Section 9 of the Report rightly mentions the potential for conflicts of interest to arise between the roles of the individual Councils as one the one hand participants in NEGC and the Garden Communities and as local planning authority on the other hand. These are real concerns and the Report, in my opinion, glosses over them.

14. I also understand that the Councils did not then propose seeking formal designation as a locally led New Town Development Corporation. The Government has set out detailed proposals in its December 2017 consultation on the New Towns Act 1981 (Local Authority Oversight) Regulations. If my understanding is correct, then this would have been a somewhat curious route to

take. It might be thought that one reason for this may be to avoid Ministerial scrutiny of the "strong evidence base demonstrating the site or sites are suitable for development at the scale proposed and that appropriate consultation has been undertaken locally" – paragraph 2.3. As paragraph 2.4 points out, designation will remain dependent on Parliamentary approval in statutory instruments and, most significantly, paragraph 2.7 notes that "there are a number of functions, which are more generally the prerogative of the Secretary of State, outside the provisions of the New Towns Act, for example the confirmation of Compulsory Purchase Orders, which should not be transferred to the Oversight Authority." However, I understand that on 27 July 2017 the board of directors of NECG agreed in principle to the formation of a Development Corporation "as far as the new regulations will allow and the Board will seek to position itself as the responsible body to do this. The minutes of that meeting also records some of the areas of uncertainty that this introduces and acknowledges the inevitable delay that will result. Paragraph 5.5 of the Minutes recognises that more work is required to pursue this.

15. To summarise, it appears that the decision of the councils to establish the NEGC and the Garden Communities proposals emerged during the course of the latter part of 2016. It involves a legally untested delivery model. There is no intention to proceed down the New Town Development Corporation route currently advocated by Government. It has identified in the Report potential for clear conflicts of interest. The NEGC proposals are largely financially driven – landowners who do not agree to the money offered for their land face one of two outcomes – their land will not be allocated in the final Plan (which raises conflicts of interest should they subsequently seek independently to develop their land) or to be compulsorily acquired. Both outcomes raise four significant legal issues summarised below. It can be seen that the first three relate to sites where the landowner is willing to cooperate in principle and the final issue relates to the use of compulsory purchase powers.

Land valuation

16. The proposals appear to be unclear as to land values. The Report talks about land values as underpinning the whole question of the viability of these proposals. However, they appear to operate on the basis that the landowners will agree to sell their land to NEGC or the LDV for below its open market value i.e. for its existing use value. But why should any developer (or any professional advisor recommend that their client) agree to do so? Whilst it is understood that initially the NEGC was not seeking formal designation as a New Town Development Corporation (even though it would be possible under section 16(7) of the Neighbourhood Planning Act 2017 and the decision of 27 July 2017 suggests a significant change of approach) the rules of compensation set out in section 5 of the Land Compensation Act 1961 will still apply and the landowner should generally receive the amount which the land if sold on the open market by a willing seller might be expected to realise. Thus, this will include "hope value" assessed in the context of the acceptability of the principle for wide scale housing provision in the area. In addition, the procedure under section 17 of the 1961 Act for Certificates of Appropriate Alternative Development will be available to affected landowners. Thus, there is no statutory basis for limiting compensation to the existing use value. If the NEGC subsequently becomes a designated Development Corporation then this may not make any significant difference to the compensation payable even though section 32 of the Neighbourhood Planning Act 2017 has made some limited changes to the Land Compensation Act 1961 to give statutory effect to the *Pointe Gourde* ("no scheme") principle.

17. It is also important to note that no New Towns have been formally designated since 1970, but several new large-scale developments have been founded such as Bar Hill in Cambridgeshire, Ebbsfleet in Kent and South Woodham Ferrers in Essex. Similarly, in December 2017 the Secretary of State granted planning permission on a recovered appeal for 2,000 new homes to the north of Gloucester (see APP/G1630/W/16/3154464 and 3164033). None of these were delivered using the complicated legal mechanism being promoted by NEGC. It is also a simple fact that there can be few within central and local government with any practical experience of setting up and running development corporations

under the near forty-year-old New Towns Act 1981 which was itself merely a consolidating Act. This may add to the perception that planning permissions are being "bought and sold" in order to provide the constituent Councils with the opportunity to generate significant financial gains. It is also important to note that those New Towns designated before 1970 were proposed against a different social and economic background. There is an illuminating summary history to be found in Professor Grant's "Urban Planning Law" pages 503-506. It also highlights the fact that whilst land prices were held generally to current use level by virtue of sections 6 and 7of, and Schedule 1 to, the 1961 Act, development value still had to be paid only where there would have been demand for the land for development of the type proposed by the Corporation irrespective of the new town proposals – see *Myers v Milton Keynes Development Corporation* [1974] 1 WLR 696. It is abundantly clear from the evidence base for the Plan, the history of planning applications and appeals and the OAN figures that there exists a high demand for residential development in North Essex irrespective of the NEGC proposals. Indeed, this is evidenced by, amongst other matters, the Braintree Local Plan Update 2. Therefore, the existing legislative provisions (including the 2017 Act) will not assist the NEGC were it to be designated a Development Corporation to suppress land values. In other words, even in a "no scheme" world, the demand for residential development in North Essex remains. A recent illustration of the difficulties that are still involved is provided by the Supreme Court's decision in *JS Bloor (Wilmslow) v Homes and Communities Agency* [2017] UKSC 12.

Planning Gain

18. If a landowner subsequently refuses to reach an agreement with the NEGC or LDV as to value and the land is then not included in the final Plan (as suggested by the comment in paragraph 8.4 of the Report) how will the relevant Council, as local planning authority, deal with any subsequent planning application for non-NEGC residential development submitted by the landowner? On what basis could it be refused?

19. There is another consideration. What will happen if a landowner outside, but close to, the area of a Garden Community were to submit a planning application for residential development at some time in the future (and bearing in mind the considerable timescale for these Garden Communities)? Will that landowner be expected to make a financial contribution to infrastructure nonetheless? If so, on what basis?

20. I would draw attention to two recent cases in this regard and which highlight the legal difficulties that local planning authorities can get into in relation to planning gain. The first is the decision of the Supreme Court in *Aberdeen City & Shire Strategic Development Planning Authority* [2017] UKSC 66 and the second is the Court of Appeal's decision *(1) Forest of Dean District Council (2) Resilient Energy Serverdale Ltd v R (oao Peter Wright)* [2017] EWCA Civ 2102 (I would also recommend reading the very informative first instance decision of Dove J which the Court of Appeal upheld and endorsed and which sets out the history behind planning gain issues).

21. This position is further complicated by the fact that the councils stand to gain financially from the NEGC proposals and thus raise the suspicion that, in effect, planning permissions will be "bought and sold".

Community Infrastructure Levy

22. In my opinion, the funding of the infrastructure needed to assist fundamental private sector residential development in North Essex could be achieved without NEGC and the LDVs and the selected delivery model by using the existing legal framework for the Community Infrastructure Levy established under the Planning Act 2008 and which was specifically designed by Parliament for this purpose. It would also avoid many of the legal issues identified above. Presently none of the Councils have a CIL Charging Schedule in place.

Compulsory Purchase Powers

23. There are no specific compulsory purchase powers designed solely to cater for the delivery of these Garden Communities. NEGC and the LDVs do not possess independent compulsory purchase powers. Only Parliament can confer such powers and it is trite law that only bodies possessed of statutory powers may compulsorily acquire land. In the case of the Garden Communities it would be for the individual local planning authorities to each consider and use whatever compulsory purchase powers that they may have to acquire any land. Compensation for any land acquired compulsorily will still be on the basis provided by section 5 of the 1961 Act i.e. open market value. It is also important to note that the relevant valuation date for a particular parcel of land is the date of entry onto and taking possession of the land or the date of the general vesting declaration or the date on which the Lands Chamber of the Upper Tribunal have determined compensation if earlier. Whichever is relevant the valuation date may be many years after the date the land is taken and may be affected by any general uplift in value in the meantime. This creates a considerable degree of uncertainty where the land on which it is proposed to create the Garden Communities may be affected by these proposals for 30 years or more. I have also not seen any consideration by the Councils or NEGC of the potential application of the Blight or Purchase Notice provisions in the Town and Country Planning Act 1990 and how these might affect the viability appraisals currently relied on.

24. In any event, it is a settled principle of law and established policy that it is for the acquiring authority to demonstrate a compelling case in the public interest for the compulsory acquisition of any land or rights in land. It is a positive obligation and consequently the burden of proof rests with the acquiring authority. It is not for the acquiring landowner to demonstrate why the land should not be acquired. Furthermore the use of these powers is closely scrutinised by both the confirming authority (the Secretary of State) and the Courts.

25. The legal position was succinctly stated by Lord Collins JSC in paragraphs 9 and 10 of the judgment of the Supreme Court in *R (on the application of Sainsbury's Supermarkets Limited) v Wolverhampton City Council* [2010] UKSC 20:

> "9. Compulsory acquisition by public authorities for public purposes has always been in this country entirely a creature of statute: Rugby Joint Water Board v Shaw-Fox [1973] AC 202, 214. The courts have been astute to impose a strict construction on statutes expropriating private property, and to ensure that rights of compulsory acquisition granted for a specified purpose may not be used for a different or collateral purpose: see Taggart, Expropriation, Public Purpose and the Constitution, in The Golden Metwand and the Crooked Cord: Essays on Public Law in Honour of Sir William Wade QC, (1998) ed Forsyth and Hare, 91.
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> 10. In Prest v Secretary of State for Wales (1982) 81 LGR 193, 198 Lord Denning MR said:
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> "I regard it as a principle of our constitutional law that no citizen is to be deprived of his land by any public authority against his will, unless it is expressly authorised by Parliament and the public interest decisively so demands ..."
>
> and Watkins LJ said (at 211-212):
>
> "The taking of a person's land against his will is a serious invasion of his proprietary rights. The use of statutory authority for the destruction of those rights requires to be most carefully scrutinised. The courts must be vigilant to see to it that that authority is not abused. It must not be used unless it is clear that the Secretary of State has allowed those rights to be violated by a decision based upon the right legal principles, adequate evidence and proper consideration of the factor which sways his mind into confirmation of the order sought."'

26. This is a point of fundamental legal principle. This decision concerned the use of the powers set out in section 226(1) of the Town and Country Planning Act 1990 to acquire land for planning purposes which would appear to be the most relevant power in relation to the delivery of the Garden Communities.

27. In addition, the Councils will also have to demonstrate that they have fully complied with the Guidance set out by the Ministry for Housing, Communities and Local Government on the "*Compulsory purchase process and the Crichel Down Rules for the disposal of surplus land acquired by, or under the threat, of compulsion*". This will include the matters raised above regarding viability and timing.

Human Rights

28. These proposals, and any action by NEGC or the LDVs will still have to respect the requirements of the Human Rights Act 1998. It is arguable that the Inspector

in examining this Plan must also act in a way that is compatible with Convention rights and could inadvertently contravene Convention rights by endorsing the approach advocated in the Plan to deprive landowners of the open market value of their land by facilitating the limitation of compensation to existing use value in the absence of any clear Parliamentary approval. He would then be in breach of section 6(1) of the Act.

29. In particular, Article 8 and Article 1 of the First Protocol to the ECHR are engaged. Thus any interference with property rights must be in the public interest, in accordance with the law and necessary in a democratic society. Overall any action must be proportionate in all the circumstances.

Conclusion

30. Paragraph 150 of the NPPF makes it clear that Local Plans are the key to delivering sustainable development that reflects the vision and aspirations of local communities. Paragraph 157 sets out the crucial requirements for Local Plans. Paragraph 182 highlights the issues that are at the heart of any Local Plan examination and how the "soundness" of a Local Plan is to be determined. In short, the Councils must demonstrate to the Inspector that the Plan is positively prepared, justified, effective and consistent with national policy.

31. In terms of the issues that I have been asked to address in this Opinion, I have a number of major concerns:

(a) It is unclear whether the scale of the development proposed in the Plan has been adequately subjected to Strategic Environmental Assessment. This lack of clarity is exacerbated by the haste in which the NEGC proposals have come forward and the uncertainty regarding delivery;

(b) Identifying the appropriate means of delivery is critical to the issue of whether the Plan is effective and therefore "sound" (especially given the acknowledgement that the method apparently chosen is untested): there are

significant differences between the legal issues that arise if the development is to be primarily private sector-led or if it is to be led by the public sector. How will the Plan guarantee that the new communities will be delivered in accordance with Garden City principles? If delivery is to be private sector-led how could compulsory purchase powers be used? If it is to be public-sector led, is that going to be via NEGC and, if so, is NEGC going to seek formal designation as a Development Corporation? If it does not do so then there must be major doubt as to how the land will be assembled if landowners do not wish to cooperate. If the Councils proceed down the Development Corporation route then it is worth noting that when the Government commenced the second phase of invitations for Garden Communities it made clear that it was going to update the New Towns Act 1981. Thus there is additional uncertainty as to if and when the necessary legislation will be enacted. What is to happen in the meantime?

(c) Furthermore there are major uncertainties over the costs and timing of delivery which may adversely impact upon the viability of the NEGC proposals as a whole.

32. In conclusion, it might be said that the NEGC proposals have been driven more by the requirements of financial planning rather than the principles of town and country planning. The effectiveness of the Plan must be of paramount importance. If the delivery mechanism cannot be shown to work the Plan cannot be effective and therefore cannot be "sound". More significantly, if the Plan fails to deliver then it will be the residents and communities of North Essex that will suffer and the Government will have failed in its objective of significantly boosting the housing stock.

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