

Thursday 23 January
2020

Morning &
afternoon
sessions

9.30am – 1.00pm &
2.00pm – 5.30pm

Matter 8

Sustainability Appraisal

The numbered questions in italics below are the original questions from the Inspector's matters, issues and questions document [IED/020]. For any original question that is not shown below, the Inspector has sufficient information from the hearing statements and responses, and is not inviting further discussion on it.

The commentary in normal typeface is from the Inspector.

*The **lettered questions in bold typeface** are the further questions on which the Inspector will be inviting discussion at the hearing session. He is not inviting written responses to these questions.*

Purpose of Sustainability Appraisal [SA] of the Section 1 Plan

One of the themes that emerges from the written representations on the Additional Sustainability Appraisal [ASA, SD/001b] is what the appropriate purpose of the SA of the Section 1 Plan should be. Should it be to assess spatial strategy options to deliver the residual need for housing and other development, over and above that for which the individual NEAs have made provision in their individual Part 2 Plans? That is the approach that has been taken by the NEAs. Or should it be to assess spatial strategy options to deliver all the development needs of the North Essex area, as some participants argue?

From what is said in the Section 1 about its purpose¹, it does not appear to be the NEAs' intention that the Section 1 Plan should provide an overarching strategy to govern the distribution of all development across the North Essex area. Consistent with this are the facts that the Plan has not been prepared as a joint development plan document under section 28 of the *Planning and Compulsory Purchase Act 2004*; and that it was submitted for examination at the same time as the Section 2 Plans, rather than in advance as one might expect if it was intended to have the role of a joint spatial strategy.

Rather, the NEAs' intention appears to be that the shared Section 1 Plan and the individual Section 2 Plans sit alongside each other, with distinct, complementary roles. The Section 1 Plan deals with cross-boundary issues: it provides a strategic vision for the North Essex area, sets out the requirements for housing and employment growth for each of the three districts, and highlights key strategic growth locations across the area [paragraph 1.13]. The Section 2 Plans operate at individual local authority level, providing the strategy for the distribution of development which each of the three NEAs proposes to accommodate in their district.

A. Against that background, is it legitimate for the ASA to take

¹ See the Introduction to the Plan, in particular paragraph 1.13, and section 3, Spatial Strategy.

the approach of assessing spatial strategy options to deliver the residual need for housing and other development (over and above that for which the individual NEAs have made provision in their individual Part 2 Plans), rather than assessing spatial strategy options to deliver all the development needs of the North Essex area?

- 1) a) *Is there adequate justification for the threshold of approximately 2,000 dwellings (ASA Main Report para 2.52) which was applied when selecting the strategic sites to be appraised at Stage 1 of the ASA?*
b) *If not, what threshold should have been applied, and why?*

The NEAs say that the threshold of 2,000 dwellings appropriately reflects the role of the Section 1 Plan in allocating strategic sites, as opposed to the non-strategic sites allocated in the Section 2 Plans, the largest of which has capacity for 1,700 dwellings. Other participants argue for a lower threshold, or no threshold at all. Some point out that Braintree's Section 2 plan identifies sites of 450 dwellings and above as "Strategic Growth Locations".

- 5) *In seeking to meet the residual housing need within the Plan period to 2033 (Additional Sustainability Appraisal [ASA, SD/001/B], Appendix 6, Principle 1), should the spatial strategy alternatives for the Stage 2 appraisal seek to provide land for:*
a) *7,500 dwellings; or*
b) *1,720 or 2,000 dwellings (the residual requirement identified in Appendix 6, Table 1); or*
c) *another figure?*

Policy SP3, as submitted, sets out a total requirement of 43,720 dwellings across the three NEAs over the Plan period (2013-33). When the three Local Plans were submitted for examination, the expected level of provision excluding the proposed garden communities (but including completions, commitments, Section 2 site allocations and windfalls) was 39,014 dwellings. Policy SP7 makes provision for an additional 7,500 within the Plan period at the GCs, giving a total provision of 46,514 – around 106% of the total requirement.

When Appendix 6 to the ASA was prepared in July 2019, additional completions and commitments had increased the expected total provision (excluding the GCs) to around 42,000 dwellings. Adding in 7,500 from the GCs gave a total provision of around 49,500, or about 113% of the total requirement. However, the NEAs had reduced their expectation of what the GCs could deliver in the Plan period to 5,910 dwellings. On that basis, total provision would be around 47,910 dwellings, or about 109.5% of the total requirement.

The current position is that the NEAs now expect completions, commitments, Section 2 site allocations and windfalls to provide a total of 44,097 dwellings in the Plan period – 377 more than the total requirement – and they expect the GCs to provide 5,910 dwellings in the Plan period. Together this adds up to total expected provision of 50,007 dwellings, or about 114% of the policy SP3 requirement. If the original GC provision of 7,500 dwellings is included instead, total expected provision would be 51,597, or 118% of the total requirement.

The NEAs argue that 16%² is a reasonable level of flexibility for the Plan period as a whole, given that a 20% buffer on five-year housing land supply is required for Councils with a record of persistent under-delivery (including Braintree and Tendring). Some other participants support this or argue for a higher figure on the grounds that it cannot be assumed that the Section 2 site allocations will all be found sound or deliver as expected. Others say that a lower level of flexibility would be appropriate, and/or that flexibility should be related just to the number of houses yet to be delivered.

I have sufficient information on both Q5 and Q1 from the written hearing statements and responses.

I would like to hear discussion on the following further question:

B. Does the ASA adequately justify the fact that it assesses only combinations of sites capable of delivering 7,500 dwellings within the Plan period, rather than also considering lower levels of delivery?

- 2) *Is the Stage 1 appraisal of alternative strategic sites based on sound and adequate evidence?*
- 3) *Has the Stage 1 appraisal of alternative strategic sites been carried out with appropriate objectivity and impartiality?*
- 9) *Is the Stage 2 appraisal of spatial strategy options based on sound and adequate evidence?*
- 10) *Has the Stage 2 appraisal of spatial strategy options been carried out with appropriate objectivity and impartiality?*

In the NEAs' hearing statement LUC summarise and respond to specific criticisms of the Stage 1 and Stage 2 appraisals made during the technical consultation, and participants have had the opportunity to make further comments in their responses to the NEAs' statement. It would not be helpful to me to hear further discussion on the merits of those same individual points.

Bearing in mind my finding in IED/011 that some of the assessments in the original SA lacked the necessary degree of objectivity, the question on which I would like to hear discussion is:

C. What evidence (if any) is there of a systematic lack of objectivity or impartiality in the ASA's Stage 1 appraisal of alternative strategic sites, and/or in the Stage 2 appraisal of alternative spatial strategies?

(Reference to specific examples may be made as part of a general answer to this question.)

² In para 8.5.13 of their statement the NEAs have calculated the surplus as 16% rather than 18% because they subtracted the current surplus of 377 from 7,500. It should have been added on.

- 4) *Does the ASA give clear and justified reasons (including in Appendix 6) for selecting the strategic sites that are taken forward from the Stage 1 to the Stage 2 appraisal, and for rejecting the alternative strategic sites?*

In their hearing statement the NEAs respond to criticisms of the decision-making process that is set out in ASA Appendix 6, pages 7-10, and participants have had the opportunity to respond further in writing. I will take all that written evidence into account. I would specifically like to hear further discussion on the following question:

D. Are the NEAs' decisions not to take ALTGC2 (Land east of Silver End), SUE3 (Land east of Braintree) and VE2 (Land at Coggeshall) forward to Stage 2 properly justified?

- 6) (a) *Is the allocation of residual housing need between West of Colchester and East of Colchester on a 2:1 ratio (ASA Appendix 6, Principle 3) justified by relative housing need and commuting patterns?*
(b) *If not, what alternative spatial allocation of residual housing need would be justified, and why?*
- 7) (a) *Is there adequate justification (including in Appendix 6) for the selection of spatial strategy options to be appraised at Stage 2 of the ASA?*
(b) *If not, what other spatial strategy option(s) should be assessed, and why?*

At pages 2-7, ASA Appendix 6 sets out seven principles devised by the NEAs to inform the selection of spatial strategy options to be assessed at Stage 2. In considering Q6 and Q7 it is also relevant to take into account the responses to Q1 and Q5 above, as they concern principles 6 and 1 respectively.

A number of participants question both the justification for some of the principles and the way in which the principles were applied by the NEAs when drawing up the spatial strategy options. I would like to invite discussion on the following further questions:

E. Is the division of north Essex into West and East sections, with a target for spatial strategies to provide approximately 5,000 and 2,500 dwellings respectively in those sections during the Plan period (ASA Appendix 6, principle 3 and Table 4), unduly influenced by the GC proposals in the submitted Plan?

F. Taking into account the way that the principles were devised and applied in ASA Appendix 6, is there any evidence that any potential options were systematically disadvantaged when the spatial strategy options were selected?

- 8) *Is there justification for basing the proportionate (hierarchy-based)*

growth spatial strategy options (West 2 and East 2) on different settlement hierarchies from those identified in the NEAs' Section 2 Plans?

The NEAs' hearing statement sets out their justification for the "unified hierarchy" used to draw up West 2 and East 2, but does not specifically address Lightwood Strategic's claim that it is "legally unsafe" for the Section 1 and Section 2 Plans to be based on different settlement hierarchies.

G. Is the use of a "unified hierarchy" as the basis for spatial strategy options West 2 and East 2 legally sound?

- 11) *Does the Stage 2 appraisal adequately and appropriately evaluate the spatial strategy options at both the end of the Section 1 Plan period and as fully built-out?*

LUC say that this has been done appropriately in accordance with my instructions, while acknowledging the difficulties in making direct comparisons between options that will be delivered by 2033 and those that will continue well beyond 2033. In their response the NEAs acknowledge that there are only small differences in the results for the two time periods, but say that this is due to the fact that most social infrastructure will be delivered in phases as development progresses. They say that the uncertainty regarding positive effects in respect of sustainable travel is clearly acknowledged in the report.

- 13) *Does the ASA give clear and justified reasons (including in the Main Report Conclusion and in Appendix 8) for selecting the preferred spatial strategy options and for rejecting the alternatives?*

In its conclusion the ASA identifies reasons why alternatives West 1, 2, 7 & 8 and East 1, 2 & 4 perform less well than the others. It identifies some of the strengths and weaknesses of the other alternatives and concludes at paragraph 6.8 that it is not possible to come to a definitive conclusion that any one strategy, whether west or east of Colchester, is the most sustainable option. It says that the advantage of the Section 1 Plan as it stands is that it provides a clear direction for strategic development over many decades to come and therefore more certainty in terms of coherence and investment, including in new transport infrastructure, services and facilities. However, some of the alternatives offer opportunities to deliver similar benefits.

In ASA Annex 8 the NEAs say that the ASA's findings show that a number of sites and spatial strategy options perform similarly against the spatial strategy objectives, but nothing arises from the appraisal to suggest that the spatial strategy in the Plan is wrong or that there are any obviously stronger-performing alternatives. They then provide a commentary on each of the alternatives which provides reasons why they consider that none of the alternatives is stronger than West 3 and East 3 (the combination in the submitted Plan).

In their written representations, other participants have given reasons why they disagree with the NEAs' analysis. I will take all their written representations into account.

In their hearing statement the NEAs say that the role of SA is to inform the choice of strategy, not to provide a definitive conclusion on which is the most appropriate option. The latter is the job of the plan-making authorities. This point appears to me to be essentially correct, notwithstanding that some

participants disagree.

Against that background, the question on which I would like to hear discussion is:

H. The NEAs have decided that a combination of spatial strategy options West 3 and East 3 (in other words, the three GCs proposed in the submitted Section 1 Plan) represents the most appropriate strategy when considered against the reasonable alternatives. Was that a reasonable decision?

- 14) *Does the ASA provide all the information required by Schedule 2 of the Environmental Assessment of Plans and Programmes Regulations 2004 (as amended) [the EA Regulations], including identifying:*
- (a) cumulative effects on the environment; and*
 - (b) measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment?*

In the NEAs' hearing statement LUC say that the ASA makes it clear at paragraph 1.11 that it does not describe the cumulative effects of the Section 1 Plan policies: that is done in the original SA report [SD/001], which is to be read together with the ASA. The ASA considers and describes the cumulative effects of the strategic site options and spatial strategy options together with existing commitments, allocations in the NEAs' Section 2 Plans, and planned development in neighbouring districts and boroughs.

LUC say that there are two main aspects to the consideration of mitigation measures. In considering alternative strategic sites and spatial strategy options, proposals to deliver services and facilities, without which significant negative effects would occur, were taken into account. Mitigation of the risk of significant environmental effects, such as on biodiversity or the historic environment, is to be provided through the policies of the Section 1 Plan: this is considered in the original SA.

Williams Group say that while section 5 of the ASA identifies potential cumulative environmental effects, it acknowledges that "without detailed sub-regional studies it is not possible to determine whether these will be significant at the sub-regional scale". When considering alternative sites or spatial strategy options, in most cases it stops short of identifying what form mitigation might take. Williams Group consider that the ASA thereby fails to meet the requirements of the EA Regulations.

CAUSE say that the ASA's analysis of cumulative effects is very superficial, with no scores or tables of the results provided, making it difficult to understand the extent of the impacts or to compare the alternatives. There is no summary of the mitigation measures needed for each site or spatial strategy option, and those mitigation measures that are proposed are vague. No mitigation measures are proposed for cumulative effects.

I have sufficient information from the written representations about participants' views on the adequacy of the ASA (and the original SA) in these respects. The question on which I would like to hear discussion is:

I. If there are omissions in the SA and ASA's consideration of

the cumulative effects of the Plan, or of mitigation measures, could any such omissions be rectified by further SA work?

12) Does the ASA give adequate and appropriate consideration to:

(a) effects of overflying aircraft to and from Stansted airport?

In the NEAs' hearing statement LUC say that potential such effects on West of Braintree GC [WoBGC] were assessed at Stage 1c. None of the relevant noise contours for the existing or the post-expansion situation at Stansted intersect with WoBGC. Flightpaths do pass over WoBGC at 3,000-6,000ft (arrivals) and 4,000-7,000ft (departures) but they are not shown to have harmful noise impacts on WoBGC. Should Andrewsfield airfield close, Stansted flight paths could be altered, but any such alterations would be subject to environmental assessment before being permitted. Consequently, the ASA concluded that potential noise effects on future residents from flightpaths crossing WoBGC are negligible.

Mr O'Connell refers to existing Government guidance which advises that noise impact of aircraft in the 4,000-7,000ft airspace should be minimised and draft CAA guidance that one of the key principles of airspace design will require avoiding overflight of more densely populated areas below 7,000ft. (In fact the Government guidance was updated in October 2017 and now states: *in the airspace at or above 4,000 feet to below 7,000 feet, the environmental priority should continue to be minimising the impact of aviation noise in a manner consistent with the government's overall policy on aviation noise, unless the CAA is satisfied that the evidence presented by the sponsor demonstrates this would disproportionately increase CO2 emissions³; and the part of the draft CAA guidance quoted by Mr O'Connell appears to have been taken forward unchanged into the final published version⁴.)*

Mr O'Connell says that the noise contours to which LUC refer show average noise levels across the year. But the flightpath over WoBGC is used only 25-30% of the time and so the average annual noise contours cannot be relied upon to show noise effects on WoBGC. He says that aircraft noise problems in the area are worsening significantly and the planning application for Stansted expansion is pending. He quotes Mr Andrews as having said at the Uttlesford LP examination that developers should be required to market houses at WoBGC as being under flightpaths. Dr Frost quotes an aviation expert from MAG (presumably Mr Andrews) as saying that overflying aircraft would exceed the noise levels on a regular and increasing basis.

Mr Andrews says that aircraft noise from the expanded Stansted has been assessed as part of the planning application. WoBGC lies about 8 miles outside the predicted noise contours beyond which there would be no observed adverse effect. There is no requirement to alter existing flightpaths to accommodate the proposed expansion. Stansted is beginning the process of airspace modernisation, which is governed by a series of parameters including a requirement to progressively reduce the noise of individual flights. The process is at an early stage and it is unclear what implications may exist for housing allocation sites. Andrewsfield airfield is not overflowed by departing aircraft from

³ DfT, *Air Navigation Guidance 2017*, para 3.3c

⁴ CAP1616a, *Airspace Design, Environmental requirements technical annex* (CAA, 2017), para 1.96

Stansted.

J. Taking all this into account, was the ASA justified in concluding that potential noise effects on future residents from flightpaths crossing WoBGC are negligible?

(b) impacts on operations at Andrewsfield airfield?

LUC say that these impacts were taken into account and that development of WoBGC as proposed in the Plan would not result in the loss of flying or community facilities, or historic assets, at Andrewsfield. However, there could be adverse cumulative effects if the proposed part of WoBGC in Uttlesford district were to proceed.

ANSC (who control the whole of Andrewsfield) & Countryside Properties say that WoBGC can be delivered without the need to develop Andrewsfield.

K. Was the ASA right to assess the impact of WoBGC on operations at Andrewsfield airfield without considering the proposed part of WoBGC in Uttlesford district?

(c) impacts on heritage assets?

LUC say that in the ASA they took a proximity-based approach to identify the potential for adverse effects on designated heritage assets, thereby identifying situations where significant adverse effects could not reasonably be avoided, and situations where it would be prudent to require further investigation and mitigation in site allocation policies. Non-designated assets were not included because of the strategic nature of the Plan and ASA. This approach is consistent with the SEA Regulations in that it includes the information reasonably required, and was applied consistently to all site options. Given the scale of the strategic sites the potential effects on the historic environment are very much influenced by the scale, location and masterplanning of development: therefore a high-level risk assessment was considered appropriate.

Historic England's view is that Heritage Impact Assessments should have been undertaken for the large strategic sites proposed in the Plan. The lack of such evidence has led, in the ASA, to an over-simplification and lack of differentiation between the various sites in terms of potential impacts on the historic environment. The failure of the ASA to consider some designated assets and all non-designated assets means that the heritage impacts of the proposed GCs have not been adequately assessed. Information on the location of Saling Grove RP&G is inaccurate.

Similar comments are made by C & L Ratcliffe, who also say that the ASA fails to identify the interactions between landscape impacts and impacts on heritage assets. The proximity-based approach taken in the ASA is particularly inappropriate when considering sites such as Saling Grove RP&G which is, by definition, landscape-based. They have submitted an extensive Heritage Impact Assessment which concludes that "the proposed development of a New Garden Community at West of Braintree would have a high to very high adverse impact causing substantial harm to the Park and its setting at Saling Grove". Mr O'Connell draws attention to advice on site allocations from Historic England

which advises that a focus on distance or visibility alone as a gauge of impact is not appropriate. He considers that a failure to consider mitigation of impacts on heritage assets at this stage conflicts with NPPF 2012 para 152.

ANSC & Countryside, who have submitted a Baseline Heritage Appraisal of West of Braintree GC, say that their Development Vision and Masterplan excludes development within approximately 1km of heritage assets at Great Saling, including Saling Hall and its historic grounds.

L. Taking all this into account, does the ASA give adequate and appropriate consideration, at this stage of the planning process, to potential impacts on heritage assets?

(d) impacts on water quality?

In the NEAs' hearing statement LUC set out the evidence on which the ASA considered potential effects on groundwater quality, and on water quality having regard to the adequacy of waste water treatment capacity. They say that neither the Environment Agency nor Anglian Water Services has raised concerns about this aspect of the ASA.

CAUSE say that the evidence base did not adequately cover the potential impacts of all the alternative sites, and that mitigation of impacts on water scarcity and sewerage capacity has not been addressed. Ptarmigan say that the analysis of the alternatives was not sufficiently nuanced.

I have enough information on this question from the written representations.

(e) impacts on air quality?

LUC say that potential effects on air quality were considered in three ways: in the context of whether options support sustainable travel behaviour and reduce the need to travel, whether sites are in areas of existing poor air quality, and whether options will increase traffic and air pollution in AQMAs. Professional judgment was used to come to a view on the likelihood of effects on air quality. The NEAS say that this was a reasonable and proportionate approach.

CAUSE have submitted a paper prepared by Prof Peckham and Dr Mills of Kent University, which criticises the air quality assessment and the consideration of the air quality impacts of the proposed GCs in the ASA. The paper draws attention to legislation and guidance on air quality and the health impacts of air pollution. Current national limit values are 40µg/m³ for the annual mean concentration of NO₂, and 40µg/m³ and 25µg/m³ for the annual mean concentration of PM₁₀ and PM_{2.5} respectively. The Government's 2019 Clean Air Strategy sets a commitment to reduce PM_{2.5} concentrations everywhere and by 2025 to halve the number of people living in locations above the WHO guideline limit of 10µg/m³ for PM_{2.5}.

AQMAs must be designated where air quality objectives are not being achieved. There are three AQMAs in Colchester Borough with concentrations of NO₂ above the national limit values, while average concentrations of PM_{2.5} in Colchester as a whole are 16-18µg/m³. Monitoring shows that the areas in and around the proposed GCs, while well below the current national limit value, either exceed or are close to the WHO guideline limit for PM_{2.5}.

Against this background, the paper argues that the current assessment of air quality impacts in the ASA is completely inadequate, lacking any reference to existing data or evidence. The traffic and other emissions generated by the proposed GCs will inevitably have an adverse impact on air quality and the evidence on the effectiveness of mitigation is unrealistic. Other participants make similar points.

M. Taking all this into account, does the ASA give adequate and appropriate consideration, at this stage of the planning process, to potential impacts on air quality?

N. Are there any other points, not already covered, which need to be discussed at this hearing session?