

North Essex Garden Communities Ltd



Further Hearing Statement for Matter 5 (Delivery mechanisms and state aid)

December 2019

Matter 5 (Delivery mechanisms and state aid)

Delivery mechanisms

Issue

Does the Section 1 Plan provide an appropriate level of detail on the delivery mechanisms needed to ensure that its policy aspirations for the proposed garden communities are achieved?

Questions

1. A number of participants argue that delivery of the proposed garden communities could be more effective if it were led by private-sector developers than by a public-sector body. Please respond to these arguments.

NEGC Ltd understands that the Local Plan does not prescribe the nature of the delivery vehicle and accept that private sector developers believe that they might be capable of delivering a Garden Community.

Each of the three Garden Communities comprise a multitude of private landowners, developer and funding sources, each with different and competing fiscal and timeframe motives and drivers. In this context, comprehensive site assembly, planning, approvals and the successful delivery of Garden Communities of such a scale and complexity can be fragmented and not easy to achieve. Even where larger private sector land holdings exist, none of these cover the full areas required for the Garden Communities, their associated infrastructure and hinterlands. 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.

A public-sector body with a strong government legislative basis and public sector ethos, has the ability to ensure comprehensive, joined up and timely delivery that can override economic and development cycles via continued investment and recycling of land value and capital and revenue fiscal returns into the Communities. Publicly owned and led entities also have stronger self-contained and linked “powers and packages” (e.g. land assembly for public benefit and LDO and CPO powers) and have demonstrated their ability to deliver new towns and garden communities in the past. They are also able to lever and coordinate public sector investment in infrastructure and placemaking.

Increasingly, there has been a trend for public and private sector organisations to work in partnership, to deliver large and complicated sites thereby taking advantage of their relative advantages as set out above. This public/private partnership approach might take the form of joint venture partnership or direct client/supplier interactions such as in the case of social and physical infrastructure provision or asset development including some types of houses and public facilities.

In its consideration of the delivery options that are available, NEGC Ltd has been clearly focused on exploring a range of public/private partnership options with or without a Locally Led New Town Development Corporation (LLNTDC) to deliver the three Garden Communities across North Essex. NEGC Ltd can confirm that it has already discussed public/private partnership options including the use of an LLNTDC with landowners and developers for each of the three Garden Communities and is

in a position to convert those discussions into commercial agreements should the Local Plan be found sound.

The NEGC Board is clear that a public sector led delivery vehicle potentially working in partnership with the private sector is the best way in which to provide confidence that the Local Plan policy aspirations will be delivered over time and to the right standard. Public control of the land would offer an additional ability to control the nature and quality of development, better able to take a long-term view of the value of early investment in infrastructure and place.

2. Is there justification for the proposed requirement in policy SP7 criterion (ii) for new models of delivery to be deployed where appropriate?

Yes. The scale and complexity of the Garden Communities will introduce different issues and challenges compared to traditional approaches. They will continue for such long timescales that they must be flexible and adaptable to fit with new models as they emerge over time. It is totally appropriate to refer to the use of new models of delivery for such types of long-term projects, and the reference to 'where appropriate' is key to recognise that different models are likely to be needed for different sites, timescales and situations.

New models of delivery such as that proposed by NEGC Ltd including the potential to apply the Locally Led New Town Development Corporation (LLNTDC) structure would take advantage of their comprehensive strategic nature and approach, their local insight, their non-profit driven nature and their existing detailed knowledge, understanding, relationships and partnerships with the public partner NEA bodies (currently shareholder owners and future Oversight Body members of any potential LLNTDC). Importantly though, the LLNTDC proposals being considered by NEGC Ltd include the potential for private sector involvement to achieve the benefits of both public and private sector approaches as set out in the response to Question 1 above.

A fundamental objective of the use of a Garden Community approach is the concept of making sure that legacy issues are taken into account from the onset to ensure that the aspiration for publicly owned and accountable stewardship is realised from the onset of masterplanning through development and on well into the maturity of any Garden Community. New models of delivery such as a LLNTDC with a clear public sector role working alongside the private sector would be ideally suited to develop and set up appropriate longer-term management vehicles for this purpose.

A further fundamental objective of the use of a Garden Community approach is the concept of making sure that any change in land value is harnessed to ensure that the Garden Community meets the Local Plan policy requirements. The approach of both NEGC and any potential LLNTDC structure, enshrined in new Government Legislation, is intended to achieve this and would be ideally suited for this purpose. Under such a public sector-based approach, a significant part of the net added value created by the Garden Communities would be directed back into the communities for the benefit of local and neighbouring residents, public facilities and services and local businesses and employees. The Parks Trust in Milton Keynes and Letchworth Heritage Foundation in Letchworth Garden City are great examples of how new models of delivery have helped establish strong, successful and sustainable legacies.

3. What is the evidence which supports the statements about the value of land acquired under compulsory purchase powers in:

(a) paragraphs 12-15 of the NEAs' Position Statement on Delivery Mechanisms [EB/084]?

Please see attached Acquisition Cost Briefing Note prepared by Avison Young (formerly GVA), which sets out how the acquisition costs based on compulsory purchase compensation were calculated.

The law is clear that in a “no scheme world” the market value of land, having disregarded the potential garden community, is the starting point for valuation. The advice from Avison Young is that that market value is in most cases the existing use value of the land. In some cases, in the absence of the garden community there would be some potential development or hope value, and that has been taken into account in the assessment of market value for each of the three Garden Communities. It is noted that even if the value of the land were being assessed having regard to the potential value of land as part of a garden community, the land value would be limited by the need to meet the policy requirement and the lengthy programme for development.

(b) paragraphs 17, 18 & 43 of the Viability Evidence by Avison Young submitted with the comments of NEGC Ltd on the June 2019 Hvas Viability Assessment Update [EB/086]?

Not applicable.

4. Would the NEAs and NEGC Ltd please respond to each of the points on the use of compulsory purchase powers made in CAUSE’s *Land Acquisition Strategy* paper, submitted with CAUSE’s comments on EB/084?

Attached to this paper is a briefing note prepared by Avison Young on the assumptions made for the use of Compulsory Purchase Orders (CPOs) to acquire the land for the Garden Communities. NEGC’s intention is to negotiate with the landowners and potential developers to establish whether there is a way of acquiring the land through a private treaty agreement reflecting its market value in the absence of the Garden Community before considering the implementation of CPOs.

In addition, as set out in the Avison Young Briefing Note, following further masterplanning work, some land and property may not be required, and this can be confirmed to owners and occupiers.

In respect of the six land acquisition strategies set out at the bottom of page 3 of CAUSE’s document, none of the CPO options they identify are correct and they do not represent NEGC’s approach to site assembly.

- If CPO powers are used, land will be acquired at market value ignoring the scheme plus non land value based compensation elements. This market value therefore may be based on existing residential / commercial / agricultural use, or it may reflect the potential for development or redevelopment of the property. Further detail on this approach is set out in the attached Avison Young Briefing Note.
- NEA and NEGC have taken specialist professional advice on the definition of ‘the Scheme’ which will need to be ignored for the purposes of assessing market value of land acquired using CPO and have based their site assembly approach on this advice. The importance of clearly identifying the overall Scheme underlying the potential use of CPO is recognised, and the July 2019 MHCLG Guidance on the use of compulsory purchase powers, including by a new town development corporation, has informed this work.
- If CPO is used, land will be acquired within 3 years of CPO confirmation, using the General Vesting Declaration process, and there is no ability to defer acquisition beyond three years using this process. Whilst acquisition could be undertaken using the Notice to Treat / Notice of Entry process throughout a longer 6-year period, this is not common practice and would be a less likely approach.

- As set out in the AY briefing note, there may be more than one CPO for each garden community to phase land acquisition, and the timing will be dependent on project needs. This is a common approach to assembling sites for multi-phase development projects where the programme stretches over an extended time period and allows a balance between certainty of site assembly and continuing use and occupation of the property required. In addition, AY experience shows that as the programme for land acquisition approaches, landowners are more engaged in discussions regarding land acquisition and sensible agreements are more likely to be reached.
- As set out in the AY note, if land is acquired in advance of being needed for the garden community, it can be let out and produce an income. Dependant on the individual circumstances, this may be the existing occupier of the land, or it may be a third party. In addition to providing additional sources of income, which will defray some of the costs of acquisition, the continued use and occupation of property will assist in maintaining the existing residential and business community within each Garden Community area.

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

NEGC Ltd understand that the Section 1 Plan is neutral on who will be responsible for delivery. However, NEGC Ltd believes there is a risk that solely privately led proposals of this type do not come forward and NEGC is willing and able to take responsibility. NEGC will continue to prepare to deliver each of the Garden Communities. Once the Local Plan is found sound the Councils are prepared to process the approval that an application is made to MHCLG for the areas to be designated as new towns and for an LLNTDC to be incorporated. At that point MHCLG will have to test whether the privately led models are likely to deliver.

A longer-term public sector led approach along the lines of public/private partnership approach set out in response for Question 1 to the delivery of the Garden Communities is likely to have more national and local Government confidence in its ability to both delivery the new development required whilst also ensuring appropriate legacy, stewardship and management well into the future. As such, it is potentially easier to coordinate a number of different government policy and funding requirements (including Treasury) and in the process be able to attract government financial support via grant or loan for both capital infrastructure investment and operational revenue requirements.

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

In light of the advantages for new models of delivery set out in answer to the questions above, the Councils should consider how policy SP7 might be amended to encourage public / private partnership approaches including explicit reference to the possible use of an LLNTC to deliver the North Essex Garden Communities. This would reflect the significant advances in legislation, regulations and guidance since the initial Examination process. This would enable sharing of risk and reward as well as ensuring that the costs of local and social infrastructure including affordable housing are appropriately borne by landowners and those promoting the Garden Communities.

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

NEGC Ltd understand that the NEAs' policy for Section 1 Plan is not to specify solely either a public sector or a private sector approach and as such be delivery model blind.

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

As set out in the response to Questions 1 and 2 above, NEGC's position is that it is likely that a public/private partnership master developer approach (potentially a LLNTDC) is best able to deliver the three Garden Communities in North Essex. However, NEGC understands that some private sector developers believe they can deliver a Garden Community meeting the criteria outlined.

As explained in the response to Questions 3 and 4 above, NEGC's intention is to negotiate with the landowners and potential developers to establish whether there is a way of acquiring the land through a private treaty agreement at a value that reflects the compensation payable in a no scheme world before considering the implementation of CPOs. This approach is predicated on the landowners and potential developers agreeing to deliver the Garden Communities in accordance with Garden City principles as set out in the emerging Section 1 Local Plan policy and which would be consistent with the statutory objectives of an LLNTDC, namely quality of development, sustainability and stewardship.

(b) If so, what are the implications for delivery of the garden communities in accordance with the NEAs' policy aspirations?

For the reasons set out in answer to the questions above, NEGC does not believe that there are any implications for the delivery of the garden communities in accordance with the NEAs' policy aspirations.

State Aid

Issue

Does the NEAs' Position Statement on State Aid [EB/085] provide reassurance that there would be no breach of state aid rules with regard to:

- a) Infrastructure investment and associated borrowing?***
- b) Government investment?***
- c) Land acquisition?***

Taking state aid rules into account, is it realistic to expect that a rate of 6% would apply to borrowing for investment in the proposed garden communities?

Questions

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

In its consideration of the delivery options that are available, NEGC Ltd has been clearly focused on exploring a range of public/private partnership options with or without a Locally Led New Town Development Corporation (LLNTDC) to deliver the three Garden Communities across North Essex. NEGC Ltd can confirm that it has already discussed public/private partnership options including the use of an LLNTDC with landowners and developers for each of the three Garden Communities, and is in a position to convert those discussions into commercial agreements should the Local Plan be found sound and should those landowners and developers being willing to adopt the Garden Community principles outlined in the Local Plan and/or in the New Towns Act legislation. NEGC Ltd is conscious that State Aid is a relevant factor in developing the structures for these public/private partnership options.

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

8. What is the NEAs’ and NEGC Ltd’s response to Mr O’Connell’s view that a real interest rate of 8%-12% would necessarily apply to debt incurred by the garden community development vehicles in the first 10 to 20 years of the garden community projects (pp8-10 of his paper)?

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 mixed residential and commercial developments rates of 6% or less are common place.

Accordingly, NEGC Ltd and Homes England are currently in the process of holding a series of workshops with some of those pension funds to explore the potential structuring of such a public/private long-term infrastructure fund. 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.

Briefing Note

North Essex Garden Communities - Acquisition Cost Budget

1. Introduction

- 1.1 Avison Young was instructed to prepare an acquisition cost budget for the North Essex Garden Communities on the assumption that the third party land and rights required were compulsorily acquired. We set out below a summary of our approach to the task.
- 1.2 Our approach is consistent with similar instructions we have undertaken for projects at a similar stage of preparation. It is common practice to prepare an estimate of third party acquisition costs at this stage and refine and update it as the project progresses and further information becomes available.

2. Methodology

- 2.1 Firstly we identify all interests within the site boundary by reference to Land Registry, Valuation Office Rating List, Valuation Office Council Tax lists, Essex Minerals Local Plan 2014 and other public information, as well as site visit and inspection undertaken from the public highway. We have not inspected any property internally. This is a standard approach at this stage of any large project.
- 2.2 The assessment of compensation is governed by a collection of statute and case law known as 'the Compensation Code'. This is summarised in stage 6, section 72-92 of the July 2019 MHCLG Guidance on Compulsory Purchase Process and the Cichel Down Rules.
- 2.3 We calculate the compensation payable based on:-
 - Market Value of Land taken
 - Severance and Injurious Affection
 - Disturbance
 - Statutory Loss payments
 - Reimbursement of professional fees
- 2.4 We carried out market research to understand the market value of agricultural, commercial, residential, minerals, development land and other specialist property types in the area.

- 2.5 Market Value is assessed disregarding the proposed Scheme. NEGC has taken specialist professional advice on the definition of 'the Scheme' which will need to be ignored for the purposes of assessing market value of land acquired using CPO, and has based their site assembly approach on this advice.
- 2.6 We discussed with the planning teams of the local planning authorities which land would have potential for development in the absence of the proposed Scheme, and reflected this development potential in our assessment of market value for the relevant properties.
- 2.7 Where we became aware of option agreements and/or promotion agreements on land within the identified boundaries, we reflected any value of these agreements and interests within our work.
- 2.8 We used our experience of other schemes and discussion with colleagues to apply disturbance rates across the various property interests. We then applied statutory loss payments in accordance with the standard calculations and made an allowance for professional fees based on experience elsewhere.
- 2.9 Total acquisition costs were then calculated for each garden community, and sub totals for differing property types within each community calculated also.

3. Adjustment for retained properties

3.1 Following our initial work, we then considered whether it was realistic to assume that all properties would need to be acquired, particularly where properties are likely to be retained within the scheme. Following discussion with the team, it was agreed that we would adjust our budget to reflect that:-

- 35% of existing residential properties;
- 50% of existing commercial properties;
- 100% of agricultural properties; and
- 100% of any identified development land

would be acquired.

3.2 This adjustment will need to be reviewed as the masterplanning of each community is progressed and the properties to be retained and/or acquired becomes clear. Where existing properties and commercial properties are acquired they will have an immediate sale or rental value. Accordingly if more existing property than anticipated is acquired the cost of doing so will be counter-balanced, to some extent, by the value that can be achieved on sale or rental.

4. Timing of site acquisition

4.1 Within the site assembly budget, Avison Young has made an allowance for the professional costs of more than one compulsory purchase order for each proposed garden community. This allows for some flexibility in the timing of acquisition of land if required once project phasing is confirmed.

- 4.2 For the West of Braintree and the Tendring Colchester Borders Garden Communities, it is assumed that two separate compulsory purchases orders are undertaken to acquire the land interests during the first six years of the projects. Because the Colchester Braintree Borders Garden Community is a larger site, it is assumed that four separate compulsory purchase orders are undertaken to acquire the land interests during the first twelve years of the project.
- 4.3 For large, multi-phase projects, site assembly may include both acquisitions by agreement or by compulsory acquisition within the overall delivery strategy. It is common practice to undertake more than one compulsory purchase order, within a clear planning policy framework and programme, to deliver phases of a comprehensive project.