

Hearing Statement Matter 7 Viability (2983 words)

Submitted by Clive Waite

Introduction

1. In my submission EB/085/15 I made reference to the fact that the NEAs had failed to secure the required funding for the A12 (HIF) and A120 (RIS2) realignment projects both being pre-requisites of their Local Plan Section 1 Garden Communities project and both requiring evidence that they can be funded as called out by the inspector's 8 June 2018 letter paras 34-37.
2. A number of material developments have occurred since the public consultation close date of 30 September 2019 which are pertinent to this matter. I therefore give further argument here as provided for under paragraph 13 of the inspector's Guidance Note IED/020.
3. I also address the land value issue as it pertains to the price the NEAs will likely have to pay in order to secure the land required in order to develop the GCs. This arises from a development that also occurred subsequent to the closure of the public consultation period.
4. My response to the inspector's questions relating to Matter 7 Viability follows thereafter.

Chancellor Announces RIS2 Awards

5. On 30 September 2019 the Chancellor of the Exchequer (CE) announced a number of awards under the RIS2 programme. The NEA's A120 realignment bid was not among them. He did say that further announcements would be made at a future date.

General Election

6. However, since the CE's announcement a general election has been called for 12 December 2019. Given the highly ambitious spending commitments contained in all the parties' election manifestos it is reasonable to suppose that whichever party forms the next government it will reprioritise its public spending commitments for the next 5 year parliamentary term. This could have a dilatory effect on further RIS2 and HIF announcements. It is in any event most unlikely that any further RIS2 awards will be made ahead of the inspector's local plan hearing timetable and quite possibly not until well after the publication of his findings. For the same reason it is also unlikely that there will be any further awards made under the government's HIF programme until well into 2020, this being the source of funding on which the NEAs are heavily reliant in order to construct the CBBGC compatible variant of the A12 southern route.

Highways England launches Consultation on revised A12 Re-alignment

7. In a further muddying of the water, on 21 October 2019 Highways England launched a public consultation relating to revised proposals for the upgrading and realignment of the A12 that also takes into account the need to bypass the CBBGC at its southern boundary. All 4 options in these new proposals represent a significant increase in costs as compared to the original RIS1 (already approved and funded) design. This rerouting exercise is offered as an alternative to the NEA's southern A12 realignment proposal which is already the subject of a yet to be awarded HIF bid.
8. The new proposals offer no conjecture as to how this revised and more expensive A12 re-alignment project might be funded (as compared to the original RIS1 funded scheme) or how this might integrate with the so far unfunded proposals contained within the schemes already presented.
9. Given that the NEAs are substantially reliant on the RIS and HIF programmes for the funding of the prerequisite roads construction plan, the foregoing events have simply served to increase further the uncertainty and confusion surrounding the availability of funding for the garden communities project and the road realignment schemes on which they depend. It is therefore very clear that without evidence of unequivocal albeit conditioned access to these funding sources the GCs project and the Section 1 Local Plan on which it relies will be rendered unsound and in any event fails to meet the directives given in the aforesaid inspector's letter paras 34-37.
10. It is now the case that the A12 and A120 widening/realignment proposals rely on no less than 3 sources of funding (RIS1, RIS2 and HIF) being the subject of discrete applications separated by time and only tenuously connected in terms of the Section 1 GCs project. The RIS2 and HIF awards have yet to materialise and, as a consequence of the Highways England A12 proposals, the RIS1 award has been thrown into confusion. This revisionary and piecemeal approach has detracted significantly from such viability as might otherwise have been attributed to this project and places its future in even more jeopardy.
11. In summary, as matters stand today, the NEA's Section 1 Local Plan proposals are dependent on 3 loosely interconnected but nevertheless separate schemes (Section 1 GCs, A12, A120) being advocated by several different agencies who are reliant on various funding sources. Three of these (RIS1, RIS2 and HIF) are administered by central government, the final makeup of which is the subject of a general election and new Queen's Speech and, with regard to the GCs themselves (including the proposed RTS) otherwise largely unidentified. This is happening at a time when all the major parties are substantially increasing their commitment to tackling climate change and making many other major spending commitments thereby putting funding for road expansion projects under increasingly severe pressure.

12. Whilst we will soon know the result of the election it is doubtful indeed whether any of the other foregoing unknowns will be resolved during the inspector's deliberations. It is therefore proposed that the inspector continues to find this Section 1 Local Plan as now presented unsound.

Precedent is set for the benchmark value of EUV plus

13. In mid October 2019 Fareham Borough Council (FBC) gave outline planning permission for a 6,000 home community garden development at Welbourne in Hampshire. This is significant in that it sets a benchmark for the value of arable land where this is being proposed for housing development along garden community lines.
14. Since their first submission the NEAs have now moved from a suggested nominal benchmark land value of £100K/acre (plus costs and fees) to a CPO driven EUV value of £10K/acre plus premium also plus costs and fees (aka EUV plus). The former amount (supported by both CBRE (Welbourne) and Savills) was considered to be the benchmark required in order to induce a sale of the land for development thereby avoiding the need for CPO in the majority of cases. However, having flagged the higher amount and then cited the much lower amount in their most recent submissions it is certain that the NEAs will encounter major resistance likely to result in protracted and expensive acquisition negotiations with the need to resort to the use of CPO powers in the great majority of cases.
15. Furthermore, given the NEAs intention to purchase land only when it is needed i.e. circa 16 hectare parcels 2 years ahead and given the 3 year limitation on CPOs, this will of necessity, in the absence of any voluntary sales, involve them in as many as 140 CPO transactions across the 3 proposed sites presumably at great cost and with the risk of substantial serial delays as each transaction is contested. Furthermore, it is far from clear as to whether the NEAs will be able to hold the "no scheme" line with such a progressive land acquisition strategy especially given the excessive timescales. Landowners are bound to test this in terms of developing and increasing "hope value" as the earlier parcels are built out.
16. Inevitably, land values attributable to similar housing developments will now be informed by an agreement in Welbourne where the private developer, with the council's tacit agreement, has signed up to a nominal benchmark price of £100K/acre. It should be noted that this agreement was concluded subsequent to the revised government advice on which the NEAs are basing their proposed CPO benchmark and is therefore presumably considered to be in line with it. It should also be noted that FBC initially proposed to acquire the entire site through the use of CPO but backed off in favour of the now agreed voluntary arrangement.
17. In view of this development it becomes increasingly doubtful that the NEAs will be successful in securing the timely ownership of the huge quantity of land their proposals require through the CPO process and at their interpretation of the value of EUV plus. No level of contingency either already included in the NEAs evidence or proposed by other parties would be sufficient

if the NEAs find themselves obliged to pay the £100K benchmark price under CPO or otherwise. It would seem that their interpretation of the government guidelines is simplistic and increasingly isolated from real world experience.

18. Also it should be noted that the foregoing argument takes no account of the present landowners' human rights as provided for in the HRA. This will clearly have been affected by the situation in Welbourne.

19. The NPPG Paragraph 012 Ref ID 10-013-20180724 advises that:

“To define land value for any viability assessment, a benchmark land value should be established on the basis of the existing use value (EUV) of the land, plus a premium for the landowner. The premium for the landowner should reflect the minimum return at which it is considered a reasonable landowner would be willing to sell their land. The premium should provide a reasonable incentive, in comparison with other options available, for the landowner to sell land for development while allowing a sufficient contribution to comply with policy requirements. This approach is often called ‘existing use value plus’.”

20. The dichotomy therefore rests on what might be considered a realistic premium sufficient to bring about the sale of the GCs land by a willing seller. For reference we can only turn to other like situations. The recent Welbourne experience is a tangible and representative example of what might in reality be required. In going with this arrangement FBC is either bowing to market forces or is guilty of profligacy through the unjustified disposal of taxpayer funds without securing commensurate value. We must therefore assume that it came to its decision based on sound commercial advice.

21. The NEAs' viability argument will be rendered untenable should it prove to be the case that they will, as precedent now suggests, in reality have to pay significantly more for the land than the EUV plus they have allowed for and this would put the entire project at serious risk of failure with the taxpayer left to meet the cost.

Responses to the Inspector's Matter 7 Questions

Q2: Is adequate provision made for the costs of infrastructure at the GCs in the 2019 Hvas VAU?

22. It is very difficult to reach an informed conclusion since there is so little design detail available. What can be said is that no allowance seems to have been made for the acquisition of land outside of the designated GCs land for the proposed RTS and indeed there is very little information (and too diverse a range of options) on the uncommitted and unbudgeted RTS Route 4. It is clear that Route 4 is an indispensable element of the proposed RTS and should be committed to and fully costed.

23. Allowing for the fact that tracked tram systems will be giving way to trackless technology and that it was a tracked option that produced the higher end range costing of £1.6B in the NEA's original submission the new RTS proposals seem nevertheless to now be weighted too much toward the lower end of the cost spectrum. Unless there is an abandonment of the trackless tram system in favour of BRT technology entirely (not just a deferral to post 2033) then such costs as have been presented seem to be unrealistic.
24. Even then the nature of the principle towns with their medieval and Roman origins give considerable scope for both statutory and community conflict when designing and constructing the required routes. It is already suggested that very little segregation is achievable in Colchester. No account has been taken of this aspect with instead, indicative per kilometre ballpark figures being deployed from another project.
25. In any event, given the distances involved, the estimated overly long journey times and the limited carrying capacity of buses, the move to trackless tram technology seems inevitable but this has to come much sooner than is being proposed if the GCs charter commitments are to be met.
26. Q3 : Apart from housing delivery rates and infrastructure costs (to be discussed under Matters 5 & 6), a number of other changes have been made to the inputs to the 2019 Hyas VAU compared with the 2017 Hyas VA [EB/013], including

j): use of inflation rates

27. The inflation scenarios as they pertain to residual land values seem ridiculous given the context in which they are being presented. Inflation is a fact of life and, given the proposed excessive length of this project (80 years) land prices at the end will bear no resemblance to today. However inflation affects everything so construction, land and other costs will rise at a comparable rate. Using the argument that inflation will somehow increase ROI with time seems incongruous especially given that the Hyas report itself points to the difficulty of forecasting value over "several economic cycles".
28. Notwithstanding future events that we cannot predict there is nothing to suggest that net percentage returns will improve or deteriorate over time as a consequence of inflation. In any event we have not been given access to the underlying data in the Hyas report nor its methodology despite requests (from CAUSE) for same so it is not possible to verify its findings.
29. Unless it can be proven that the various elements in a housing construction project will cost inflate at consistently different rates over the life of the project it would be just as relevant to calculate percentage returns at today's prices in order to gauge a representative rate of return (be that IRR or NPV). Furthermore, the NEA's intention to purchase land 2 years before it is

developed means that the purchase will be subject to such price inflation as may have accumulated by the time of the transaction thereby neutralising any gain in land values on the part of the purchaser.

30. This attempt to present end of life residual land values in the context of an improving rate of ROI is misleading and does not compensate for the prevailing day 1 unassisted residual values where these are inadequate. Where the effective cost of debt/capital is not commensurate with the current rate of inflation in the short term this cannot persist indefinitely and must inevitably move to equilibrium. In the longer term inflation per se does not create value.

Q7: Is the assumption that land will be purchased two years before it is required for development a sound one to make?

31. No. There are several fundamental problems with this approach.

32. Firstly, the NEA's declared intention to purchase land at EUV plus is very likely to be strongly contested by landowners especially given the NEA's earlier position of indicating a notional "willing seller" price of around £100K/acre, that amount having since been preceded by the Welbourne case. Consequently, the NEAs will likely need to resort to multiple protracted CPOs in the majority of cases and will be required to defend at land tribunals in many of them. Taking this into consideration, at what point prior to need might the NEAs be required to commence proceedings? Given such uncertainties it will be extremely difficult to operate to such a precise 2 year timetable. This therefore calls for a generous contingency in terms of debt servicing cost in order to cover for the whole gamut of ownership overruns risk.

33. Secondly, the proposal to purchase parcels of land of circa 16 hectares size means that these complex, protracted and costly transactions will have to be repeated many times over. At CCBGC alone this would amount to some 67 transactions over the life of the project.

34. Following the proposed planning permission and land preparation stages, assuming that these can be concluded within the 2 year period, sale of the land to a developer will be subject to housing market conditions and competition. In the case of the Braintree district for example the surfeit of planning permissions already granted and the build out rate that this will likely induce, risks creating an oversupply position thus putting downward pressure on sale prices and/or stalling the disposal of the said land. The disposal of land will need to find a willing buyer which cannot be guaranteed.

35. Also, buying serviced land with planning permission leaves little scope for land value improvement making such land less attractive for speculation. This might make developers reluctant to make further land purchasing commitments where such land cannot be developed immediately after purchase due to suppressed demand such as during market down cycle periods.

36. Furthermore, a “sudden death” sale of the land is not the only method of disposal. Development under license offers many attractions to the developer not least of which is not having to find the required capital for the up front purchase of the said land. This arrangement means that the land is gradually sold off to the ultimate homeowner over the build out period with the effect of adding further to the time that the land is held by the master developer thus increasing the debt service costs.
37. This means of land transfer is proving popular as well as being tax efficient and is exemplified by a major 1,600 home project at Alconbury in Cambridgeshire. However, it should be pointed out the master developer, Urban & Civic (the principle player in this space) sees the optimum upside of any housing development of this nature to be around 5,000 homes. Whilst the more traditional model of preparing the land and then selling it for development still prevails this new method is fast gaining in popularity with developers and may soon become the de facto method for larger schemes and cannot therefore simply be ignored in any meaningful viability argument.