



North Essex Authorities
Section 1 Local Plan

Matter 8 - Sustainability Appraisal
23 January 2020

Hearing Statement on behalf of
CAUSE
December 2019

Matter 8: Sustainability Appraisal

Issues:

Does the Additional Sustainability Appraisal [ASA] adequately address the shortcomings in the submitted SA that were identified in my post-hearing letter to the NEAs of 8 June 2018 [IED011]?

It is considered that the ASA does not adequately address the shortcomings in the submitted SA that were identified in the post-hearing letter [IED011], which has been addressed in detail in CAUSE's representations (September 2019). In particular:

- **Evidence** - The need to examine the evidence base with regard to viability, provision of transport infrastructure and employment opportunities.
- **Objective Comparison** - An objective comparison of individual garden community site options at a range of different sizes
- **Selection/Rejection of Options** - Adequate reasons for selecting/rejecting options using the updated evidence base

Does the ASA justify the selection of the preferred spatial strategy option for the Section 1 Plan?

- The ASA does not justify the selection of the preferred spatial strategy options for the Section 1 Plan.
- Equal consideration of the alternative options has not been undertaken as a result of the failure to apply the same standard of evidence to each alternative considered, particularly in relation to viability and transport.
- The results of the ASA are inconclusive and do not demonstrate that the evidence has been used to support the results.
- It is not clear how the findings of the consultations have been considered or influenced the plan's development or the ASA
- The in-combination and cumulative effects of the alternative options have not been adequately assessed
- Suitable mitigation measures have not been identified
- The proposed strategy is driven by the desire to deliver new infrastructure without sufficient guarantees over funding, timing and delivery, particularly for transport and the RTS. The viability and deliverability of the strategy is therefore uncertain.
- The ASA has failed in its main purpose; to demonstrate the assessment of all reasonable alternatives in a comprehensive, equal and consistent manner, which is supported by the evidence base.
- The ASA has not shown that the chosen strategy is the most appropriate when assessed against the reasonable alternatives.

Questions:

- 1a) 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?

No, there is no justification provided to explain the thresholds for strategic or non-strategic sites or the threshold of 2,000 dwellings as set out in CAUSE's representations (**September 2019, page 13**). The threshold appears to have been an arbitrary decision rather than one based on criteria or evidence.

The ASA advises that sites are considered non-strategic if included in the Section 2 Local Plans, however, the Braintree Local Plan refers to sites ranging from 450-1750 dwellings as Strategic Growth Locations. Furthermore, the maximum number of dwellings in the Braintree Section 2 Plan is 1750 not 1000.

- 1b) If not, what threshold should have been applied, and why?
NEAs to explain criteria used.

- 2) Is the Stage 1 appraisal of alternative strategic sites based on sound and adequate evidence?

No on both counts, as set out in **Section 2.2 of CAUSE's representations (pages 5-10)**. New evidence that was requested by the Inspector is not referenced within the SA report, particularly in relation to viability, employment and transport infrastructure.

In addition, where updates to the evidence have occurred, the information is frequently either absent or in less detail for the alternative options to the Council's preferred strategy. As a consequence, the assessment has not been carried out on equal basis. The evidence should have been taken into account to inform the selection or rejection of alternatives.

The absence of financial input into the choice of size and location of the alternative sites and spatial strategies is a major flaw. Appraisals have only been provided for the NEA's three previously preferred sites, with the alternative sites reliant on the promoter Site Information Forms (SIF) where no due diligence has taken place to ascertain whether they are accurate.

CAUSE has submitted evidence that financial viability starts to decline for settlement sizes above 2,000 dwellings. This has been ignored, in contravention of the NPPF 2012 requirement that 'the most appropriate strategy' should be chosen.

- 3) Has the Stage 1 appraisal of alternative strategic sites been carried out with appropriate objectivity and impartiality?

No. The site assumptions made in the Stage 1 appraisal do not demonstrate the necessary objectivity or impartiality for the assessment. For example, it is assumed that where local centres and employment are provided within new communities, that this will meet the needs of the strategic site and will not have an impact upon existing centres. Reference to how the existing centres are currently performing is not provided. It is also unclear why it should be assumed that the strategic sites will have no impact upon the existing centres, this assumption is not supported by evidence and would appear to give a preference to the Garden Communities.

There is an over dependence on information on the Site Information Forms, regarding the specifics of the sites, provided by developers. This information appears to have been taken as read and formed the basis of the main evidence for the assessment, rather than the evidence base of the Local Plan. A 'self-declaration' that a site is viable, and that external funding will be required for the provision of infrastructure without any supporting information, is not sufficient. The capacity of the existing infrastructure or the housing and employment need of the settlements is also not discussed, with potentially misleading results.

- 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?

No, there are no clear and justified reasons given for selecting or rejecting the strategic sites. The ASA has set out a Site Assumption Framework at **Table 2.7: Stage 1c appraisal assumptions and key data sources (p39)**, which pre-scores the sites against the SA framework based on separate criteria for each objective. The evidence to support the assumptions relies heavily on the information provided by the developers in the Site Information Forms, rather than the evidence supporting the Local Plan.

Reasoning for the assumptions taken in the Stage 1c site assessments is not provided and results in a flawed approach, which has not used the necessary evidence base to inform the findings.

The SA results for the Stage 1c site assessments also provide uncertain results as follows:

'The uncertainty arises due to the fact that the exact infrastructure requirements of a development, the capacity of existing infrastructure, and the details of the infrastructure to be delivered, will be finalised through further work including the preparation, submission and determination of a planning application.'

It is not surprising that without the key information above the results can only be uncertain and the assessment is therefore providing no value.

A review of the results has found that the sites score very similarly as confirmed in the conclusions **ASA at p167**: 'no sites performed particularly well and no sites particularly poorly' and that 'it was not possible to definitively rule out sites on the basis of SA alone. The ASA Main Report provides no explanation for the sites taken forward into the Stage 2 assessment or the sites rejected, presumably because the results were inconclusive.

- 5) In seeking to meet the residual housing need within the Plan period to 2033 (ASA 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?

The ASA fails to explain why the NEAs option of 7,500 is the preferred option or assess alternative options to this e.g. the residual figure identified or alternative options in between.

- 6a) 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?

There is no explanation for the 'notional' split of the East/West division of housing requirements. The lack of justification would appear to show a scenario that has been fabricated to fit the preferred strategy of the Garden Communities.

The conclusion that a strategy that deviates from the 2:1 ratio would not reflect the evidence of housing need across the authorities, does not reflect the identified split of housing need (33:42:25).

- 6b) If not, what alternative spatial allocation of residual housing need would be justified, and why?

It is unclear why an alternative has not been considered that considers the 33:42:25 split of residual housing need or 13% additional flexibility above their OAN requirements identified across the authorities, as set out at Appendix 6 – page 5. The reason for selecting and rejecting options has not been explained, as required by the regulations and guidance

- 7a) Is there adequate justification (including in Appendix 6) for the selection of spatial strategy options to be appraised at Stage 2 of the ASA?

No as set out in **section 2.4** of CAUSE's representations. For example, the equal percentage of growth (18%) distributed across all settlements, regardless of any constraints, cannot be considered a 'reasonable' alternative as shown by the results. Some locations are not able to accommodate the numbers assigned to them under an equal distribution because they are significantly constrained locations in terms of the sensitivity of ecology and landscape, as well as limited transport infrastructure. Justification for the approach is not provided. The selection of the alternatives should have been based on the evidence available.

7b) If not, what other spatial strategy option(s) should be assessed, and why?
A review of the evidence to establish the settlements ability to accommodate growth should have been undertaken to determine realistic levels and locations for growth and potential options.

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?

No comment

9) Is the Stage 2 appraisal of spatial strategy options based on sound and adequate evidence?

No, as set out in **Section 2.2 (pages 5-10)** and **Section 2.4.10-2.4.18 (pages 18-20)** of CAUSE's representations and **Question 2** of this report. In addition to the failure to use the evidence base available in carrying out the assessment, significant discrepancies have been identified in the scoring. There are also gaps in the evidence base for options that do not form part of the preferred strategy. It is therefore not possible to consider the options on an equal basis.

Recent case law emphasises the need to assess alternatives appropriately. In the *Heard v Broadland DC* case [EWHC 344 (Admin) 24 Feb 2012], the need for an 'equal examination' of the alternatives, alongside the preferred options was emphasised as an important part of the process, which should be subjected to 'fair and public analysis' (para 71).

The need to undertake an equal examination of the alternatives was also set out in the Inspector's letter **[IED011]** but the ASA has failed to rectify the flaws previously identified. Where a local planning authority has failed to consider reasonable alternatives properly, it will be unlawful for the Secretary of State to recommend adoption of the plan and it will be unlawful for the local planning authority to adopt the plan.

The importance of assessing all reasonable alternatives against a robust evidence base has also been demonstrated in recent Inspector's findings from Examinations in Public.

- **Hart Council, 2019** - The Inspector found that there was insufficient evidence to support the findings of the Plan or to enable a robust comparison of reasonable alternatives to be undertaken, based on proportionate evidence.
- **West of England Joint Spatial Plan, 2019** - the Inspectors were not persuaded that there was evidence to demonstrate that the Strategic Development Locations, and thus the overall spatial strategy, had been selected for inclusion in the plan against reasonable alternatives, on a robust consistent and objective basis. It was therefore recommended that the plan be withdrawn.

The conclusion that the preferred strategy provides more certainty in terms of coherence and investment, including new transport infrastructure, services and facilities is not demonstrated by the evidence available.

- 10) Has the Stage 2 appraisal of spatial strategy options been carried out with appropriate objectivity and impartiality?

No, as shown by the fact the NEAs carried out the selection and rejection of the alternative spatial strategies, rather than LUC, as shown in Appendices 6 and 8. The ASA should have been carried out by LUC to inform the decision-making process of the Local Plan by the NEAs.

In addition, the key issues raised in the 'Check and Challenge' workshop do not appear to have been addressed or reflected in the assessment.

The 7 Principles to guide the planning judgment of the selection of the reasonable spatial strategies have also been developed by the NEA. The objectivity of these principles is questionable and could be seen as a way to justify pre-determined decisions on the preferred strategy rather than considering the information with an 'open mind'.

In particular, the wording of Principle 5 in effect automatically disregards the CAUSE proposals as an option and does not demonstrate that the assessment has been carried out with the necessary objectivity.

Furthermore, the results are very broad brush and based on a wide range of assumptions that are not linked to or demonstrated by the evidence available. Significant discrepancies in the scores have also been identified, which provide an unjustified uplift for the Garden Communities and corresponding downturn for the CAUSE sites (see representations **2.4.14-2.4.18**).

- 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?

The difference between the results for within the plan period and when fully built out is very slight. The explanation of the results is very superficial and does not take into account the uncertainty of the deliverability of key infrastructure such as the RTS.

- 12) Does the ASA give adequate and appropriate consideration to:
- a) Effects of overflying aircraft to and from Stansted airport?
No comment
 - b) Impacts on operations at Andrewsfield airfield?
No comment
 - c) Impacts on heritage assets?
No. It is acknowledged that 'no specialist study of alternative strategic sites was available to inform judgments on the significance and sensitivity to large scale development of historic environment assets, including how their setting contributes to their significance' (**ASA para 2.98**).
 - d) Impacts on water quality?
The evidence base has not been updated to include the impact of new sites such as the CAUSE proposals e.g. the Water Cycle Strategy. In addition, specific mitigation measures to overcome water scarcity and sewerage capacity have not been addressed in the ASA. Such a significant issue should have been assessed. (**see CAUSE paper on Water, Summer 2019 and the Appendix to the Hearing Statements**).
 - e) Impacts on air quality?
The only reference to air quality in the sustainability assessment concludes, without any detailed analysis or reference to current national policy or local data, that impacts on air quality will be minimal or negligible. It is inconceivable that building 6,500 houses will not impact local air quality. (**see CAUSE representations 2.2.15 and Air Quality Statement**)
- 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 option and for rejecting the alternatives?
- No. Instead the NEAs conclude that 'nothing arises from the appraisal to suggest that the spatial strategy in the Submitted Section 1 Local Plan is wrong or that there are any obvious stronger performing alternatives that should be substituted.' (Appendix 6), whilst LUC concludes that it is not possible to come to a definitive conclusion that any one strategy is the most sustainable option.
- The fact that LUC is unable to come a conclusion demonstrates that the ASA has not provided clear and justified reasons for selecting the preferred spatial strategy and rejecting the alternative options. In addition, the lack of conclusion relates to a flawed assessment which gives almost identical results for all the options, often as a result of a lack of suitable evidence to provide a definitive result. Had suitable evidence been prepared for all options, of a comparative nature, the results would more than likely have been very different. The use of general assumptions has led to generalities in the results.
- Suitable information on the viability and deliverability of the different options is also lacking, despite the specific advice provided by the Inspector. The conclusion that the preferred strategy provides more certainty in terms of coherence and investment, including new transport infrastructure, services and facilities is not demonstrated by the evidence available.

14) Does the ASA provide all the information required by Schedule 2 of the *Environmental Assessment of Plans and Programmes Regulations 2004* (as amended), including identifying:

(a) cumulative effects on the environment; and

No. The cumulative effects of the individual options and different combinations is very superficial and does not provide a table of the results making it very difficult to compare the performance of the different alternatives. No scores are provided to illustrate the extent of the impacts or enable an easy comparison of the alternatives that have been considered. It is therefore not possible to understand which alternatives have the most significant cumulative effects overall or whether such impacts can be mitigated. The regulations and guidance are clear that the cumulative effects need to be assessed when evaluating the significance of effects.

In order to understand the cumulative impacts of the different options, the viability and deliverability of the proposals should also have been considered, in accordance with the Regulations and guidance.

(b) measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment?

No. **Para 3.135, page 167** of the ASA confirms that the Stage 1 assessment was carried out prior to any mitigation being taken into account. There is also no summary of the mitigation measures that are needed for each site or spatial strategy option. The mitigation measures that are provided are very vague and are not based on any actual measures or policies. There are also no mitigation measures proposed for the cumulative effects.



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