

North Essex Examination Hearings - Additional Hearing Session for Matter 1

Supplementary Statement of Lightwood Strategic

INSPECTOR'S AGENDA

The Agenda is based on Questions 1, 2, 7 & 9 in the Inspector's Matters, Issues and Questions document [Document IED/003] for the original Matter 1 hearing session held on 16 January 2018. To set the context, those original questions are reproduced below. However, discussion at the additional hearing, and any hearing statements, should be limited to dealing with the specific (lettered) questions which follow each original question below.

- (i) Lightwood notes that the specific agenda questions for the additional Matter 1 hearing session derive from its statement of February 12th. Therefore, Lightwood has effectively already made a statement on the questions posed. It is not necessary and is unlikely to be helpful to repeat or summarise the original points raised.
- (ii) The NEA's responded to the Lightwood statement on March 23rd, with the caveat that an additional statement would be prepared by April 13th to respond to the specific additional agenda questions. However, given that those questions were published by the Inspector on March 5th the NEA's will have been informed of the key points identified by the Inspector in Lightwood's February 12th statement, and will have been able to use these to inform its initial response.
- (iii) Lightwood consider that the most useful additional contribution that can be made is to identify key points of contention in respect of the NEA's March 23rd statement.
- (iv) These additional points should not detract attention from Lightwood's February 12th statement, including the appendices to it.

Matter 1: Legal and procedural requirements; Key Issues, Vision and Strategic Objectives (Chapter 1)

Main issues:

Have the relevant legal requirements been met in the preparation of the Section 1 Plan?

Do any amendments need to be made to Chapter 1 of the Section 1 Plan in order to ensure its soundness and legal compliance?

Questions:

1) *Is there clear evidence that, in the preparation of the Section 1 Plan, the North Essex Authorities [NEAs] have engaged constructively, actively and on an ongoing basis with neighbouring authorities and prescribed bodies on strategic matters and issues with cross-boundary impacts in accordance with section 33A of the Planning and Compulsory Purchase Act 2004, as amended [the 2004 Act]?*

(a) Did the NEAs meet the Duty to Co-operate in respect of their handling of the proposals by Lightwood Strategic for the inclusion in the Section 1 Plan of a new settlement [“Monks Wood”] on the Pattiswick Estate to the east of Braintree, particularly in respect of:

(i) co-operation between the NEAs themselves, and

(ii) co-operation with neighbouring authorities and prescribed bodies?

1.1 The key features of Lightwood’s case in relation Q1a (i-ii) are presented in paragraphs 1.1 -1.20 of its February 12th statement. Set out below are comments on the NEA’s response to that statement.

1.2 In light of the NEA’s March 23rd response a key issue is whether the Duty to Co-operate applies to the consideration of Monks Wood as part of a reasonable alternative spatial strategy for the Part 1 Plan. If it does, then notwithstanding our case that there has not been effective co-operation between the NEA themselves (and with Essex County Council), there is enough in the NEA’s March 23rd response to demonstrate a Duty to Co-operate failure in respect of active and ongoing process with neighbouring authorities (Uttlesford and Chelmsford) and prescribed bodies.

1.3 At paragraph 14, the NEA’s state that officers did not specifically consult on ‘objection sites’ with neighbouring authorities or statutory consultees (i.e. prescribed bodies) ‘during this time’. What is meant by during ‘this time’ is not clear but we infer that it relates to the period March 2016-February 2017, and possibly beyond. This does not demonstrate the constructive, active and ongoing engagement required by the Duty.

1.4 The NEA’s argue that they are ‘safe’ in terms of the Duty as it does not require LPA’s to consult with neighbouring authorities or prescribed bodies on ‘objection sites’, particularly where the location would not have any specific direct effect on neighbouring authorities. However, this is not how the Duty is defined as a matter of law. This is set out in Section 33A of the 2004 Act.

1.5 Section 33A (4) (a) states that a strategic matter includes:

sustainable development or use of land that has or would have a significant impact on at least two planning areas (in particular) sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas...¹

¹ S33(4)(b) is not relevant as it applies to development that is a County Matter (i.e. minerals planning)

- 1.6 Further, paragraphs 178 and 181 of the NPPF refer to *planning issues that cross administrative boundaries* and *issues with cross-boundary impacts*. These are broader conceptions of ‘strategic matters’ and go beyond objection sites that straddle administrative boundaries. Unmet housing need is the classic Duty to Co-operate issue and does not relate to sites that straddle administrative boundaries.
- 1.7 The identification of Monks Wood as a reasonable alternative to a new settlement to the West of Braintree (extending into Uttlesford²) means that its potential role as part of a sustainable spatial strategy for the plan area triggers the Duty to Co-operate. Monks Wood has the potential to significantly reduce the scale of West of Braintree or remove it entirely from the Part 1 Plan. There is no evidence that Uttlesford were engaged with in respect of the Duty on a spatial strategy that included Monks Wood (in place of West of Braintree) prior to consultation on the regulation 18 Plan, during the regulation 18 consultation, or subsequently.
- 1.8 In our February 12th statement we also made an observation on Monks Wood (at a village scale) being an alternative to Colchester-Braintree Borders (a town of 24,000 homes), and that this was relevant to Chelmsford (as housing market area, and functional economic area partner), and to prescribed bodies such as Highways England in respect of the A120 and A12. Braintree’s Duty to Co-operate statement notes an ‘ongoing need for co-operation with Highways England due to the A12 and A120 route options’ (bullet 5, page 3). On the basis of paragraph 14 of the NEA’s March 23rd response, this did not take place in respect of the potential role of Monks Wood in delivering a northern route option (with a Development Plan context as opposed to other processes).
- 1.9 In terms of the ‘prescribed bodies’, at the end of paragraph 14 the NEA’s state that these would have ‘been aware’ of the Monks Wood proposal as it was in the public domain. That is clearly not good enough to discharge the Duty.
- 1.10 Monks Wood forms part of a strategic matter (i.e. scenario testing and optioneering for a long term sustainable development strategy that introduces new settlements, indeed new towns, into the urban hierarchy and functional economic system of Essex) and that the NEA’s are default of the Duty. Its availability as an option for such a strategy goes to the wisdom of the choices that have been made for that strategy.
- 1.11 We rely on our February 12th statement in respect of an assessment of the internal co-operation between the NEA authorities in respect of the Duty but make the following points in relation to the Council’s March 23rd response.
- 1.12 Paragraph 7 states that all the NEA’s were informed about and consulted upon Monks Wood as soon as it was identified by Lightwood. Lightwood’s involvement was made known in August 2016 based on its duly made representations on the regulation 18 plan, and therefore we assume that the statement means to refer to Sworders initial correspondence with Braintree in early March 2016, on behalf of the landowner. It remains the case that Braintree DC made a decision, in just three days (Emma Goodings email of 11.03.16), to regard Monks Wood as an objection site, before the draft plan was even prepared. The NEAs have not revealed the correspondence that was made between the authorities leading to their joint decision.
- 1.13 Paragraph 9 states that work on the SA to inform the Braintree Local Plan was largely completed by March 2016. However, the initial suite of AECOM assessments on four garden community options (the preferred three and North Colchester) was only just commissioned at this time (paragraph 1.12 of our 12th February statement highlights the AECOM press release

² The North Essex SA for West of Braintree tests the concept of a new settlement here spreading into Uttlesford, and Policy SP8 of the Uttlesford Local Plan (Regulation 18 stage) shows the development West of Braintree extending into Uttlesford, increasing the size of the new settlement by 3,500 homes (see bottom of page 54 of Braintree DTC Statement: SDBDC005).

of 15th March 2016) and thus it is difficult to see on what evidential basis this SA is alleged to have been undertaken in respect of garden community options.

- 1.14 Paragraph 11 misrepresents the process. Monks Wood should never have been regarded as an objection site on March 11th 2016. AECOM had only just been instructed to prepare a consistent evidence base for garden community options. The AECOM suite of work could and should have captured the Monks Wood location (and the Metro Plan) in Spring 2016. That it did not acted against the NEA's ability effectively discharge the Duty between themselves or with other LPAs and prescribed bodies during crucial months of plan-making up to, during and following the regulation 18 consultation.
- 1.15 Paragraph 16 is also misleading. It claims that following the October 31st 2016 Braintree Local Plan sub-committee meeting there were a series of such meetings up to 16th May 2017, at which representations on the regulation 18 draft plan were considered. This is a partial truth in respect of Monks Wood. There were meetings, but there is no evidence that Monks Wood was reported to the LP sub-committee as even a rejected spatial strategy option at or prior to the vision recommendation on 31st October 2016. If Braintree officers were not reporting the Monks Wood location to Braintree members at this time, it is difficult to see how effective internal and external Duty engagement could have been taking place. Further, in our February 12th statement (Appendix 1: Plan-making timeline) we set out the agenda for subsequent sub-committee meetings and none had regard to Monks Wood until 16th May 2017. In our regulation 19 representations we critiqued that 16th May 2016 report for a number of reasons.
- 1.16 Therefore, in summary, our answer is that there is not clear evidence that the NEA's co-operated to the degree required between themselves, nor with relevant authorities, nor with the prescribed bodies in respect of Monks Wood, and its potential role in the spatial strategy.

2) *Have the North Essex Authorities complied with the requirements of section 19(5) of the 2004 Act with regard to Sustainability Appraisal [SA]?*

(a) Should the individual SA assessment of the Monks Wood proposal, and the assessment of alternatives for the spatial strategy, have been carried on the basis that Monks Wood could be delivered at various different scales of development?

2.1 Yes

(b) If so, what other scale(s) of development at Monks Wood should have been assessed?

- 2.2 Paragraphs 2.6 – 2.10 of our February 12th statement set out our observations in relation to question 2(a) and 2(b).
- 2.3 Firstly, the SA currently tests a proposition [15,000 units] that is so far in excess of the realistic scales of development at Monks Wood that it fails to test the Monks Wood option at all.
- 2.4 The Monks Wood location was first introduced by Sworders in March 2016 on behalf of the landowner to Braintree Council at 5,000-6,000 dwellings. This was to get over the unjustified minimum threshold that the NEA's had imposed for new garden communities. Lightwood maintained adherence to this figure in its August 2016 representations. It is often referenced as a figure at which it becomes possible for a development to support its own secondary school, but evidence from Essex County Council demonstrates that a figure of 3,000 homes can support on-site secondary school place provision. Notwithstanding, the Government prefers a threshold of 1,500 homes as set out in its Garden Towns and Villages Prospectus, as referenced in our regulation 19 representations.
- 2.5 The belated AECOM assessment of Monks Wood tested one scale of development (5,000 homes), whereas for the original options, two to four levels of development were tested. For the original four options it is these levels of development that feature in the Sustainability

Appraisal. It is not therefore clear why the AECOM report for Monks Wood translated into a figure of 15,000 in the Sustainability Appraisal. It shows a disconnect in the preparation of the plan and is symptomatic of late and rushed assessment of Monks Wood, that is incompatible with the Duty.

- 2.6 At the very least, to be at partially consistent in respect of the methodology that drew on AECOM, the SA should have tested only 5,000 dwellings rather than only 15,000 dwellings at Monks Wood.
- 2.7 Because the threshold of 5,000 is not justified and the upper level of development proposed at Monks Wood is 7,000 dwellings, if four options were to be tested (as per Marks Tey) then these should be 1,500, 3000, 5000 and 7000 dwellings, to inform a policy choice within this range. This would reflect the Government's minimum threshold, the secondary school options and the top end of the proposition for the Pattiswick Estate, i.e. Monks Wood.

(c) Should the SA assessment of combinations of three proposed garden communities also have assessed a combination or combinations that included Monks Wood together with various scales of development at Colchester/Braintree Borders and Tendring/Colchester Borders?

(d) If so, what specific combination(s) should have been assessed?

- 2.8 These matters are covered in paragraphs 2.11 – 2.23 of our February 12th statement, which draw on our regulation 19 representations.
- 2.9 As stated in that statement, the answer is yes in respect of the long-term scale of development to be tested / planned for now (with the option of further expansion on the basis of monitoring and plan review). Secondly, as raised at the January hearings, given the overall risk profile of the preferred spatial strategy for each of the three chosen garden communities to deliver 2,500 homes during the plan period, there is justification for selecting an additional fourth strategic location to achieve 7,500 homes (new settlement or otherwise i.e. a garden suburb). This would be consistent with part of the rationale for garden communities i.e. for minimising the dispersal of housing.
- 2.10 Although Lightwood consider the upper scale of Monks Wood to be 7,000 homes, in our representations we advocated that, at this stage, no 'new settlement' garden community should be planned at more than 5,000 homes, given the jobs/homes evidence that is available.
- 2.11 Our focus is on the Monks Wood / Marks Tey relationship with; each other, the key centres of Braintree and Colchester to the east and west, Coggeshall in between, and also in relation to the planned improvements to the A12 and the potential future of the A120. We advocate that testing 3,000 or 5,000 homes each at Monks Wood and Marks Tey, i.e. enabling village scale settlements in the urban hierarchy, is a very different proposition to 15,000 homes and 24,000 homes, yet represents many years of housing supply. This would not rule out further expansion but this would be subject to their economic and social success, future housing needs, environmental effects, and the views of another cohort of decision makers.
- 2.12 At present, the SA only tests options for all garden communities at the upper end of what might be termed a village, stretching to 'town' scale. Not assessing a more modest scale for garden communities is not a reasonable limitation on the reasonable alternative options for the spatial strategy. Part of the reasoning for the rejection of Monks Wood was the combined impact on Coggeshall of 15,000 homes here and 24,000 homes at Marks Tey. Planning for 3,000-5,000 homes in two settlements between Braintree and Colchester is a reasonable alternative and a different proposition.
- 2.13 The SA rejects four garden communities as the preferred approach but only on the basis of the settlements being at the upper end of a village scale or indeed a town. West of Braintree is

planned for as a cross boundary 'town', Marks Tey is tested and planned for as a town and Monks Wood is tested as a town. If smaller, new settlement concepts are tested, which they should be (e.g. due to the achievable jobs/homes balance and the fact that new towns will compete with each other and existing towns for their place in the functional economic system and a share of economic growth), it affects the wisdom of the selection of three new towns in the plan area (plus west of Dunmow in Uttlesford), as opposed to four smaller garden communities, and additional SA appraisal would be needed. This relates back to the independent ATLAS study of new settlement planning as referred to in our regulation 19 representations

Reasonable spatial strategy alternatives for three Garden Communities

Monks Wood	Braintree / Colchester Borders	Colchester/Tendring Borders	West of Braintree	Total
3,000	3,000	3,000	0	9,000
5,000	5,000	5,000	0	15,000
3,000	0	3,000	3,000	9,000
5,000	0	5,000	5,000	15,000

Reasonable spatial strategy alternatives for four Garden Communities (de-risking under delivery during the plan period, whilst being consistent with a spatial strategy of concentration rather than dispersal)

Period	Monks Wood	Braintree / Colchester Borders	Colchester/Tendring Borders	West of Braintree	Total
Total Commitment in this Plan	3,000	3,000	3,000	3,000	12,000
	5,000	5,000	5,000	5,000	20,000
Plan Period Delivery	1,875	1,875	1,875	1,875	7,500

2.14 Any combination /optioneering exercise that includes Monks Wood at 15,000 homes is based on a false proposition. The correct proposition is materially different and thus will influence the sustainability appraisal of a wider three or more garden community strategy. The assessed scale of other locations, i.e. Marks Tey, will also affect the overall sustainability of the spatial strategy options that include Monks Wood.

(e) If the Inspector finds that there are shortcomings in the SA in respect of (a) and/or (c) above:

- (i) would this mean that the SA fails to comply with relevant legal requirements?**
- (ii) which specific requirements are those?**
- (iii) what steps would be required to make the SA legally compliant?**

2.15 Yes

- 2.16 The core requirements of the assessment of alternatives in the environmental report are set out in the bulleted list below, referenced to the SEA Directive and SEA Regulations, with our conclusion thereon summarised in paragraph.
- Article 2(b): “environmental assessment” shall mean the preparation of an environmental report (ER), the carrying out of consultations, the taking into account of the environmental report and the results of the consultations in decision-making and the provision of information on the decision in accordance with Articles 4-9.
 - Article 5(1) and Annex I of the Directive (or SEA Regulation 12 and Schedule 2)
 - The ER must identify, describe and evaluate “the likely significant effects on the environment of implementing the plan or programme” and “reasonable alternatives taking into account the objectives and the geographical scope” of the plan/programme
 - Article 5 cross-refers to a list of necessary information set out in Annex I of the Directive (failure to include this information risks legal challenge)
 - Annex I(h): the duty is not just to deal with reasonable alternatives but to explain the reasons for selecting the alternatives dealt with (**Save Historic Newmarket vs SoS & Forest Heath [2011 EWHC 606 (Admin)]**)
 - Commission Guidance para. 5.6: “the studying of alternatives is an important part of the assessment” (therefore failure to comply will leave the plan/programme vulnerable to legal challenge)
 - Commission Guidance para. 5.12: the LSEEs of the plan/programme and alternatives must be “identified, described and evaluated in a comparable way” and “the information referred to in Annex I should thus be provided for the alternatives chosen”.
 - Commission Guidance para. 5.13: “The first consideration in deciding on possible reasonable alternatives should be to take into account the objectives and the geographical scope of the plan or programme. The text does not specify whether alternative plans or programmes are meant, or different alternatives within a plan or programme. In practice, different alternatives within a plan will usually be assessed (e.g. different means of waste disposal within a waste management plan, or different ways of developing an area within a land use plan). An alternative can thus be a different way of fulfilling the objectives of the plan or programme. For land use plans, or town and country planning plans, obvious alternatives are different uses of areas designated for specific activities or purposes, and alternative areas for such activities. For plans or programmes covering long time frames, especially those covering the very distant future, alternative scenario development is a way of exploring alternatives and their effects”.
 - Commission Guidance para. 5.14: “The alternatives chosen should be realistic. Part of the reason for studying alternatives, is to find ways of reducing or avoiding the significant adverse environmental effects of the proposed plan or programme. Ideally, though the Directive does not require that, the final draft plan or programme would be the one which best contributes to the objectives set out in Article 1. A deliberate selection of alternatives for assessment, which had much more adverse effects, in order to promote the draft plan or programme would not be appropriate for the fulfilment of the purpose of this paragraph. To be genuine, alternatives must also fall within the legal and geographical competence of the authority concerned. An outline of the reasons for selecting the alternatives dealt with is required by Annex I (h).”

- Article 6: (Reg 13 of the SEA Regulations) – Draft plan/programme and ER shall be made available to “the public” (including relevant NGOs) and the designated authorities (EH, NE & EA) – The public and the designated authorities “shall be given an early and effective opportunity within appropriate time frames to express their opinion on the draft plan or programme and the accompanying environmental report” before adoption.
- Article 8: the ER and consultation responses “shall be taken into account during the preparation of the plan or programme and before its adoption”.

2.17 By not assessing Monks Wood at the right scale or range of scales (as per the preferred locations), and by applying the erroneous scale to scenario testing/spatial strategy optioneering, the SA has not actually assessed the reasonable alternative spatial strategies as purported. This error would not be completely corrected unless the scale of other locations was also reduced in spatial scenarios in which Monks Wood was also included. The NEA’s have not justified why smaller scales of garden community development are not a realistic alternative, or why the chosen scales have been selected.

2.18 The SA that has been consulted on is deficient, meaning that the consultation responses have been affected. These need to be taken into account and if they are based on erroneous information they will be potentially tainted. As set out in our February 12th statement an addendum SA report is needed and to be consulted on, whilst avoiding ex post facto rationalisation of the submitted Plan.

7) *Have the North Essex Authorities complied with all other relevant legislative requirements in the preparation and submission of the Section 1 Plan?*

(a) Is it agreed that, as a consequence of the NEAs’ failure to register Lightwood Strategic’s duly-made representations at Regulation 19 consultation stage, the following Regulations³ were breached in respect of those representations, and consequently that section 20(3) of the *Planning and Compulsory Purchase Act 2004* was also breached?:

- i) **Regulation 22(1)(c) – requirement to prepare a statement of representations and submit it to the Secretary of State: the failure in this respect is that the submitted statement did not accurately set out the number of representations made or summarise all the main issues raised in those representations**
- ii) **Regulation 22(1)(d) – requirement to submit all representations to the Secretary of State**
- iii) **Regulation 22(3)(a)(iii) – requirement to make all representations publicly available**
- iv) **Regulation 22(3)(b) – requirement to notify the general consultation bodies and specific consultation bodies that representations are available for inspection: notification was given as required, therefore any failure in this respect is that not all the representations were available for inspection**
- v) **Regulation 22(3)(c) – requirement to notify those who so request of the submission of the Local Plan to the Secretary of State**
- vi) **Regulation 24 – requirement to give all those making representations six weeks’ notice of the opening of the hearing sessions**

7.1 Yes; although it seems that if notification was given under Reg 22(3)(b), the failure was actually under Reg 22(3)(a)(iii) in that bodies so notified would not have found the Lightwood representations.

³ Of the *Town and Country Planning (Local Planning) (England) Regulations 2012*, as amended.

(b) Taking into account all the steps that have been taken to enable Lightwood Strategic to participate in the examination process, since the Inspector was alerted on 18 January 2018 to the NEAs' failure to register their duly-made representations, in what way(s) might Lightwood Strategic's interests, the interests of any other party or parties, and/or the interests of natural justice be prejudiced by those breaches?

- 7.1 Regulation 22 is a mandatory step imposed on the LPAs in order for section 20(2) and s. 20(3) to be met. Material failings under it cannot be 'cured' after the event; rather, to comply with s.20 it is necessary for the Plan to return to the stage it had reached prior to the breach. This is, indeed, what Lightwood say should occur in any event in order to properly consider the proposal at Monks Wood objectively on a comparable basis, free from the infection of an unlawful desire to 'share reward', properly subject to a Directive-compliant SA and consultation, with the formulation of the Strategy following, rather than leading the SA process. Lightwood would also add Section 20(2) of the 2004 Act.
- 7.2 It is recognised that the Court, in considering whether in its discretion to quash a plan, may take account of prejudice suffered and Lightwood note in that context that the breach of Reg 22(3)(c) [failure to notify of submission to Secretary of State] has effectively been overcome as Lightwood became aware of the submission to the Secretary of State; however, the related breach of Reg 24 [failure to give six weeks' notice] caused Lightwood to have only a few days to prepare for the hearing sessions it could attend, to its material disadvantage compared to other participants, as well as preventing it from attending Matter 1 as originally convened. This means that the Inspector heard contributions on Matter 1 without Lightwood being able to respond, rebut or re-inforce those comments as it may have wished, and without Lightwood being supported by others in its own submissions. This cannot be cured.
- 7.3 In addition, the breaches of Reg 22(1)(c) [failure to submit an accurate statement of representations] and Reg 22(1)(d) [failure to submit all representations to the Secretary of State] have prejudiced Lightwood by the Examination (which starts upon submission) proceeding and being framed and formulated by the Inspector with reference to or benefiting from the case and evidence presented by Lightwood. The breach of Reg 22(3)(a)(iii) [failure to make all representations publically available] prejudiced Lightwood by preventing fellow objectors from formulating their cases and representations without reference to or benefiting from the case and evidence presented by Lightwood. It is not possible, after the event, to gauge what and how the Examination, evidence and representations would have altered as a result, or how parties might otherwise have conducted themselves, which is why these breaches cannot be remedied after the event.

(c) Are there any other relevant legislative requirements, not identified elsewhere on this agenda, with which the NEAs have failed to comply in the preparation and submission of the Section 1 Plan? If so, what are the consequences of that failure, and how can it be remedied?

- 7.4 No, Section 20(2) of the 2004 Act, as above

9) ***Do the Vision for North Essex and the Strategic Objectives provide an appropriate framework for the policies of the Section 1 Plan?***

(a) **Is it lawful for a Local Plan and its policies to require or encourage**

- (i) **new approaches to delivery and partnership working, and**
- (ii) **the sharing between the public and private sectors of risk and reward* from development?**

*** Participants are asked to note that the NEAs now propose to remove the reference to “risk and reward” from the Vision for North Essex (and from policy SP7).**

- 9.1 It can never be lawful to *require* a ‘new approach’; i.e. to have a situation where not to adopt a new approach is contrary to policy. First, because, the only relevant test is effectiveness of the approach chosen, not its novelty and, secondly, because such a requirement would be unreasonable for want of sufficient certainty.
- 9.2 It is dubious the extent to which it is even lawful to *encourage* a ‘new approach’ (i.e. to go beyond where policy is just explicitly permissive of new approaches) as it must be made clear despite that encouragement that it would not be contrary to policy not to adopt a new approach. The matter remains ambiguous, however, as such policy text would tend to indicate it as being a material consideration *in favour* of permission if a new approach is adopted; and a material consideration *against* if one is not. Again, given that the only relevant test is effectiveness, not novelty, that would be an unreasonable outcome.
- 9.3 It can never be lawful for permission to be contingent on the developer sharing his risk and reward with the public decision-making body. That is to offend the fundamental principle of Constitutional Law that appropriation by the Executive (here, the LPA) requires express Parliamentary sanction [see *AG v Wilts United Dairies* and *Congreve v Home Office* previously supplied]. This constitutional principle of English Law was established through the Civil War and enshrined in the 1688 Bill of Rights. So fundamental a principle is it that, again, it would not be lawful to have a policy that even encouraged such an approach as, as just noted above, failure to share reward could then be taken as a material consideration against a proposal – which would itself offend the principle.
- 9.4 It is noted that the NEAs, rightly, recognise that they must take out the offending passages. That is welcomed. However, this does not cure the objection to the Plan, as it is plain from all the issues covered in the other Matter sessions that the desire or intention by the NEAs to share reward underpins the whole logic of the approach to Garden Communities, their location (where it was thought land deals were in the offing), their scale (driven by the debt-heavy/interest farming approach to viability), their evidential basis, their SA assumptions and all of the public engagement that has been undertaken on the basis of this premise. This, then, goes directly to the soundness of the Plan: to remove the ‘risk and reward’ wording (which must be done if the Plan is to be lawful) removes what was in truth the whole foundation of the approach by the NEAs to identifying the Garden Communities and, in particular, the extraordinary proposition of a Plan committing to 43,000 dwellings in order to deliver 7,500 during the plan period.

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1.2 In light of the NEA’s March 23rd response a key issue is whether the Duty to Co-operate applies to the consideration of Monks Wood as part of a reasonable alternative spatial strategy for the Part 1 Plan. If it does, then notwithstanding our case that there has not been effective co-operation between the NEA themselves (and with Essex County Council), there is enough in the NEA’s March 23rd response to demonstrate a Duty to Co-operate failure in respect of active and ongoing process with neighbouring authorities (Uttlesford and Chelmsford) and prescribed bodies.

1.3 At paragraph 14, the NEA’s state that officers did not specifically consult on ‘objection sites’ with neighbouring authorities or statutory consultees (i.e. prescribed bodies) ‘during this time’. What is meant by during ‘this time’ is not clear but we infer that it relates to the period March 2016-February 2017, and possibly beyond. This does not demonstrate the constructive, active and ongoing engagement required by the Duty.

1.4 The NEA’s argue that they are ‘safe’ in terms of the Duty as it does not require LPA’s to consult with neighbouring authorities or prescribed bodies on ‘objection sites’, particularly where the location would not have any specific direct effect on neighbouring authorities. However, this is not how the Duty is defined as a matter of law. This is set out in Section 33A of the 2004 Act.

1.5 Section 33A (4) (a) states that a strategic matter includes:

sustainable development or use of land that has or would have a significant impact on at least two planning areas (in particular) sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas...¹

¹ S33(4)(b) is not relevant as it applies to development that is a County Matter (i.e. minerals planning)

- 1.6 Further, paragraphs 178 and 181 of the NPPF refer to *planning issues that cross administrative boundaries* and *issues with cross-boundary impacts*. These are broader conceptions of ‘strategic matters’ and go beyond objection sites that straddle administrative boundaries. Unmet housing need is the classic Duty to Co-operate issue and does not relate to sites that straddle administrative boundaries.
- 1.7 The identification of Monks Wood as a reasonable alternative to a new settlement to the West of Braintree (extending into Uttlesford²) means that its potential role as part of a sustainable spatial strategy for the plan area triggers the Duty to Co-operate. Monks Wood has the potential to significantly reduce the scale of West of Braintree or remove it entirely from the Part 1 Plan. There is no evidence that Uttlesford were engaged with in respect of the Duty on a spatial strategy that included Monks Wood (in place of West of Braintree) prior to consultation on the regulation 18 Plan, during the regulation 18 consultation, or subsequently.
- 1.8 In our February 12th statement we also made an observation on Monks Wood (at a village scale) being an alternative to Colchester-Braintree Borders (a town of 24,000 homes), and that this was relevant to Chelmsford (as housing market area, and functional economic area partner), and to prescribed bodies such as Highways England in respect of the A120 and A12. Braintree’s Duty to Co-operate statement notes an ‘ongoing need for co-operation with Highways England due to the A12 and A120 route options’ (bullet 5, page 3). On the basis of paragraph 14 of the NEA’s March 23rd response, this did not take place in respect of the potential role of Monks Wood in delivering a northern route option (with a Development Plan context as opposed to other processes).
- 1.9 In terms of the ‘prescribed bodies’, at the end of paragraph 14 the NEA’s state that these would have ‘been aware’ of the Monks Wood proposal as it was in the public domain. That is clearly not good enough to discharge the Duty.
- 1.10 Monks Wood forms part of a strategic matter (i.e. scenario testing and optioneering for a long term sustainable development strategy that introduces new settlements, indeed new towns, into the urban hierarchy and functional economic system of Essex) and that the NEA’s are default of the Duty. Its availability as an option for such a strategy goes to the wisdom of the choices that have been made for that strategy.
- 1.11 We rely on our February 12th statement in respect of an assessment of the internal co-operation between the NEA authorities in respect of the Duty but make the following points in relation to the Council’s March 23rd response.
- 1.12 Paragraph 7 states that all the NEA’s were informed about and consulted upon Monks Wood as soon as it was identified by Lightwood. Lightwood’s involvement was made known in August 2016 based on its duly made representations on the regulation 18 plan, and therefore we assume that the statement means to refer to Sworders initial correspondence with Braintree in early March 2016, on behalf of the landowner. It remains the case that Braintree DC made a decision, in just three days (Emma Goodings email of 11.03.16), to regard Monks Wood as an objection site, before the draft plan was even prepared. The NEAs have not revealed the correspondence that was made between the authorities leading to their joint decision.
- 1.13 Paragraph 9 states that work on the SA to inform the Braintree Local Plan was largely completed by March 2016. However, the initial suite of AECOM assessments on four garden community options (the preferred three and North Colchester) was only just commissioned at this time (paragraph 1.12 of our 12th February statement highlights the AECOM press release

² The North Essex SA for West of Braintree tests the concept of a new settlement here spreading into Uttlesford, and Policy SP8 of the Uttlesford Local Plan (Regulation 18 stage) shows the development West of Braintree extending into Uttlesford, increasing the size of the new settlement by 3,500 homes (see bottom of page 54 of Braintree DTC Statement: SDBDC005).

of 15th March 2016) and thus it is difficult to see on what evidential basis this SA is alleged to have been undertaken in respect of garden community options.

- 1.14 Paragraph 11 misrepresents the process. Monks Wood should never have been regarded as an objection site on March 11th 2016. AECOM had only just been instructed to prepare a consistent evidence base for garden community options. The AECOM suite of work could and should have captured the Monks Wood location (and the Metro Plan) in Spring 2016. That it did not acted against the NEA's ability effectively discharge the Duty between themselves or with other LPAs and prescribed bodies during crucial months of plan-making up to, during and following the regulation 18 consultation.
- 1.15 Paragraph 16 is also misleading. It claims that following the October 31st 2016 Braintree Local Plan sub-committee meeting there were a series of such meetings up to 16th May 2017, at which representations on the regulation 18 draft plan were considered. This is a partial truth in respect of Monks Wood. There were meetings, but there is no evidence that Monks Wood was reported to the LP sub-committee as even a rejected spatial strategy option at or prior to the vision recommendation on 31st October 2016. If Braintree officers were not reporting the Monks Wood location to Braintree members at this time, it is difficult to see how effective internal and external Duty engagement could have been taking place. Further, in our February 12th statement (Appendix 1: Plan-making timeline) we set out the agenda for subsequent sub-committee meetings and none had regard to Monks Wood until 16th May 2017. In our regulation 19 representations we critiqued that 16th May 2016 report for a number of reasons.
- 1.16 Therefore, in summary, our answer is that there is not clear evidence that the NEA's co-operated to the degree required between themselves, nor with relevant authorities, nor with the prescribed bodies in respect of Monks Wood, and its potential role in the spatial strategy.

2) *Have the North Essex Authorities complied with the requirements of section 19(5) of the 2004 Act with regard to Sustainability Appraisal [SA]?*

(a) Should the individual SA assessment of the Monks Wood proposal, and the assessment of alternatives for the spatial strategy, have been carried on the basis that Monks Wood could be delivered at various different scales of development?

2.1 Yes

(b) If so, what other scale(s) of development at Monks Wood should have been assessed?

- 2.2 Paragraphs 2.6 – 2.10 of our February 12th statement set out our observations in relation to question 2(a) and 2(b).
- 2.3 Firstly, the SA currently tests a proposition [15,000 units] that is so far in excess of the realistic scales of development at Monks Wood that it fails to test the Monks Wood option at all.
- 2.4 The Monks Wood location was first introduced by Sworders in March 2016 on behalf of the landowner to Braintree Council at 5,000-6,000 dwellings. This was to get over the unjustified minimum threshold that the NEA's had imposed for new garden communities. Lightwood maintained adherence to this figure in its August 2016 representations. It is often referenced as a figure at which it becomes possible for a development to support its own secondary school, but evidence from Essex County Council demonstrates that a figure of 3,000 homes can support on-site secondary school place provision. Notwithstanding, the Government prefers a threshold of 1,500 homes as set out in its Garden Towns and Villages Prospectus, as referenced in our regulation 19 representations.
- 2.5 The belated AECOM assessment of Monks Wood tested one scale of development (5,000 homes), whereas for the original options, two to four levels of development were tested. For the original four options it is these levels of development that feature in the Sustainability

Appraisal. It is not therefore clear why the AECOM report for Monks Wood translated into a figure of 15,000 in the Sustainability Appraisal. It shows a disconnect in the preparation of the plan and is symptomatic of late and rushed assessment of Monks Wood, that is incompatible with the Duty.

- 2.6 At the very least, to be at partially consistent in respect of the methodology that drew on AECOM, the SA should have tested only 5,000 dwellings rather than only 15,000 dwellings at Monks Wood.
- 2.7 Because the threshold of 5,000 is not justified and the upper level of development proposed at Monks Wood is 7,000 dwellings, if four options were to be tested (as per Marks Tey) then these should be 1,500, 3000, 5000 and 7000 dwellings, to inform a policy choice within this range. This would reflect the Government's minimum threshold, the secondary school options and the top end of the proposition for the Pattiswick Estate, i.e. Monks Wood.

(c) Should the SA assessment of combinations of three proposed garden communities also have assessed a combination or combinations that included Monks Wood together with various scales of development at Colchester/Braintree Borders and Tendring/Colchester Borders?

(d) If so, what specific combination(s) should have been assessed?

- 2.8 These matters are covered in paragraphs 2.11 – 2.23 of our February 12th statement, which draw on our regulation 19 representations.
- 2.9 As stated in that statement, the answer is yes in respect of the long-term scale of development to be tested / planned for now (with the option of further expansion on the basis of monitoring and plan review). Secondly, as raised at the January hearings, given the overall risk profile of the preferred spatial strategy for each of the three chosen garden communities to deliver 2,500 homes during the plan period, there is justification for selecting an additional fourth strategic location to achieve 7,500 homes (new settlement or otherwise i.e. a garden suburb). This would be consistent with part of the rationale for garden communities i.e. for minimising the dispersal of housing.
- 2.10 Although Lightwood consider the upper scale of Monks Wood to be 7,000 homes, in our representations we advocated that, at this stage, no 'new settlement' garden community should be planned at more than 5,000 homes, given the jobs/homes evidence that is available.
- 2.11 Our focus is on the Monks Wood / Marks Tey relationship with; each other, the key centres of Braintree and Colchester to the east and west, Coggeshall in between, and also in relation to the planned improvements to the A12 and the potential future of the A120. We advocate that testing 3,000 or 5,000 homes each at Monks Wood and Marks Tey, i.e. enabling village scale settlements in the urban hierarchy, is a very different proposition to 15,000 homes and 24,000 homes, yet represents many years of housing supply. This would not rule out further expansion but this would be subject to their economic and social success, future housing needs, environmental effects, and the views of another cohort of decision makers.
- 2.12 At present, the SA only tests options for all garden communities at the upper end of what might be termed a village, stretching to 'town' scale. Not assessing a more modest scale for garden communities is not a reasonable limitation on the reasonable alternative options for the spatial strategy. Part of the reasoning for the rejection of Monks Wood was the combined impact on Coggeshall of 15,000 homes here and 24,000 homes at Marks Tey. Planning for 3,000-5,000 homes in two settlements between Braintree and Colchester is a reasonable alternative and a different proposition.
- 2.13 The SA rejects four garden communities as the preferred approach but only on the basis of the settlements being at the upper end of a village scale or indeed a town. West of Braintree is

planned for as a cross boundary 'town', Marks Tey is tested and planned for as a town and Monks Wood is tested as a town. If smaller, new settlement concepts are tested, which they should be (e.g. due to the achievable jobs/homes balance and the fact that new towns will compete with each other and existing towns for their place in the functional economic system and a share of economic growth), it affects the wisdom of the selection of three new towns in the plan area (plus west of Dunmow in Uttlesford), as opposed to four smaller garden communities, and additional SA appraisal would be needed. This relates back to the independent ATLAS study of new settlement planning as referred to in our regulation 19 representations

Reasonable spatial strategy alternatives for three Garden Communities

Monks Wood	Braintree / Colchester Borders	Colchester/Tendring Borders	West of Braintree	Total
3,000	3,000	3,000	0	9,000
5,000	5,000	5,000	0	15,000
3,000	0	3,000	3,000	9,000
5,000	0	5,000	5,000	15,000

Reasonable spatial strategy alternatives for four Garden Communities (de-risking under delivery during the plan period, whilst being consistent with a spatial strategy of concentration rather than dispersal)

Period	Monks Wood	Braintree / Colchester Borders	Colchester/Tendring Borders	West of Braintree	Total
Total Commitment in this Plan	3,000	3,000	3,000	3,000	12,000
	5,000	5,000	5,000	5,000	20,000
Plan Period Delivery	1,875	1,875	1,875	1,875	7,500

2.14 Any combination /optioneering exercise that includes Monks Wood at 15,000 homes is based on a false proposition. The correct proposition is materially different and thus will influence the sustainability appraisal of a wider three or more garden community strategy. The assessed scale of other locations, i.e. Marks Tey, will also affect the overall sustainability of the spatial strategy options that include Monks Wood.

(e) If the Inspector finds that there are shortcomings in the SA in respect of (a) and/or (c) above:

- (i) would this mean that the SA fails to comply with relevant legal requirements?**
- (ii) which specific requirements are those?**
- (iii) what steps would be required to make the SA legally compliant?**

2.15 Yes

- 2.16 The core requirements of the assessment of alternatives in the environmental report are set out in the bulleted list below, referenced to the SEA Directive and SEA Regulations, with our conclusion thereon summarised in paragraph.
- Article 2(b): “environmental assessment” shall mean the preparation of an environmental report (ER), the carrying out of consultations, the taking into account of the environmental report and the results of the consultations in decision-making and the provision of information on the decision in accordance with Articles 4-9.
 - Article 5(1) and Annex I of the Directive (or SEA Regulation 12 and Schedule 2)
 - The ER must identify, describe and evaluate “the likely significant effects on the environment of implementing the plan or programme” and “reasonable alternatives taking into account the objectives and the geographical scope” of the plan/programme
 - Article 5 cross-refers to a list of necessary information set out in Annex I of the Directive (failure to include this information risks legal challenge)
 - Annex I(h): the duty is not just to deal with reasonable alternatives but to explain the reasons for selecting the alternatives dealt with (**Save Historic Newmarket vs SoS & Forest Heath [2011 EWHC 606 (Admin)]**)
 - Commission Guidance para. 5.6: “the studying of alternatives is an important part of the assessment” (therefore failure to comply will leave the plan/programme vulnerable to legal challenge)
 - Commission Guidance para. 5.12: the LSEEs of the plan/programme and alternatives must be “identified, described and evaluated in a comparable way” and “the information referred to in Annex I should thus be provided for the alternatives chosen”.
 - Commission Guidance para. 5.13: “The first consideration in deciding on possible reasonable alternatives should be to take into account the objectives and the geographical scope of the plan or programme. The text does not specify whether alternative plans or programmes are meant, or different alternatives within a plan or programme. In practice, different alternatives within a plan will usually be assessed (e.g. different means of waste disposal within a waste management plan, or different ways of developing an area within a land use plan). An alternative can thus be a different way of fulfilling the objectives of the plan or programme. For land use plans, or town and country planning plans, obvious alternatives are different uses of areas designated for specific activities or purposes, and alternative areas for such activities. For plans or programmes covering long time frames, especially those covering the very distant future, alternative scenario development is a way of exploring alternatives and their effects”.
 - Commission Guidance para. 5.14: “The alternatives chosen should be realistic. Part of the reason for studying alternatives, is to find ways of reducing or avoiding the significant adverse environmental effects of the proposed plan or programme. Ideally, though the Directive does not require that, the final draft plan or programme would be the one which best contributes to the objectives set out in Article 1. A deliberate selection of alternatives for assessment, which had much more adverse effects, in order to promote the draft plan or programme would not be appropriate for the fulfilment of the purpose of this paragraph. To be genuine, alternatives must also fall within the legal and geographical competence of the authority concerned. An outline of the reasons for selecting the alternatives dealt with is required by Annex I (h).”

- Article 6: (Reg 13 of the SEA Regulations) – Draft plan/programme and ER shall be made available to “the public” (including relevant NGOs) and the designated authorities (EH, NE & EA) – The public and the designated authorities “shall be given an early and effective opportunity within appropriate time frames to express their opinion on the draft plan or programme and the accompanying environmental report” before adoption.
- Article 8: the ER and consultation responses “shall be taken into account during the preparation of the plan or programme and before its adoption”.

- 2.17 By not assessing Monks Wood at the right scale or range of scales (as per the preferred locations), and by applying the erroneous scale to scenario testing/spatial strategy optioneering, the SA has not actually assessed the reasonable alternative spatial strategies as purported. This error would not be completely corrected unless the scale of other locations was also reduced in spatial scenarios in which Monks Wood was also included. The NEA’s have not justified why smaller scales of garden community development are not a realistic alternative, or why the chosen scales have been selected.
- 2.18 The SA that has been consulted on is deficient, meaning that the consultation responses have been affected. These need to be taken into account and if they are based on erroneous information they will be potentially tainted. As set out in our February 12th statement an addendum SA report is needed and to be consulted on, whilst avoiding ex post facto rationalisation of the submitted Plan.

7) *Have the North Essex Authorities complied with all other relevant legislative requirements in the preparation and submission of the Section 1 Plan?*

(a) Is it agreed that, as a consequence of the NEAs’ failure to register Lightwood Strategic’s duly-made representations at Regulation 19 consultation stage, the following Regulations³ were breached in respect of those representations, and consequently that section 20(3) of the *Planning and Compulsory Purchase Act 2004* was also breached?:

- i) **Regulation 22(1)(c) – requirement to prepare a statement of representations and submit it to the Secretary of State: the failure in this respect is that the submitted statement did not accurately set out the number of representations made or summarise all the main issues raised in those representations**
- ii) **Regulation 22(1)(d) – requirement to submit all representations to the Secretary of State**
- iii) **Regulation 22(3)(a)(iii) – requirement to make all representations publicly available**
- iv) **Regulation 22(3)(b) – requirement to notify the general consultation bodies and specific consultation bodies that representations are available for inspection: notification was given as required, therefore any failure in this respect is that not all the representations were available for inspection**
- v) **Regulation 22(3)(c) – requirement to notify those who so request of the submission of the Local Plan to the Secretary of State**
- vi) **Regulation 24 – requirement to give all those making representations six weeks’ notice of the opening of the hearing sessions**

- 7.1 Yes; although it seems that if notification was given under Reg 22(3)(b), the failure was actually under Reg 22(3)(a)(iii) in that bodies so notified would not have found the Lightwood representations.

³ Of the *Town and Country Planning (Local Planning) (England) Regulations 2012*, as amended.

(b) Taking into account all the steps that have been taken to enable Lightwood Strategic to participate in the examination process, since the Inspector was alerted on 18 January 2018 to the NEAs' failure to register their duly-made representations, in what way(s) might Lightwood Strategic's interests, the interests of any other party or parties, and/or the interests of natural justice be prejudiced by those breaches?

- 7.1 Regulation 22 is a mandatory step imposed on the LPAs in order for section 20(2) and s. 20(3) to be met. Material failings under it cannot be 'cured' after the event; rather, to comply with s.20 it is necessary for the Plan to return to the stage it had reached prior to the breach. This is, indeed, what Lightwood say should occur in any event in order to properly consider the proposal at Monks Wood objectively on a comparable basis, free from the infection of an unlawful desire to 'share reward', properly subject to a Directive-compliant SA and consultation, with the formulation of the Strategy following, rather than leading the SA process. Lightwood would also add Section 20(2) of the 2004 Act.
- 7.2 It is recognised that the Court, in considering whether in its discretion to quash a plan, may take account of prejudice suffered and Lightwood note in that context that the breach of Reg 22(3)(c) [failure to notify of submission to Secretary of State] has effectively been overcome as Lightwood became aware of the submission to the Secretary of State; however, the related breach of Reg 24 [failure to give six weeks' notice] caused Lightwood to have only a few days to prepare for the hearing sessions it could attend, to its material disadvantage compared to other participants, as well as preventing it from attending Matter 1 as originally convened. This means that the Inspector heard contributions on Matter 1 without Lightwood being able to respond, rebut or re-inforce those comments as it may have wished, and without Lightwood being supported by others in its own submissions. This cannot be cured.
- 7.3 In addition, the breaches of Reg 22(1)(c) [failure to submit an accurate statement of representations] and Reg 22(1)(d) [failure to submit all representations to the Secretary of State] have prejudiced Lightwood by the Examination (which starts upon submission) proceeding and being framed and formulated by the Inspector with reference to or benefiting from the case and evidence presented by Lightwood. The breach of Reg 22(3)(a)(iii) [failure to make all representations publically available] prejudiced Lightwood by preventing fellow objectors from formulating their cases and representations without reference to or benefiting from the case and evidence presented by Lightwood. It is not possible, after the event, to gauge what and how the Examination, evidence and representations would have altered as a result, or how parties might otherwise have conducted themselves, which is why these breaches cannot be remedied after the event.

(c) Are there any other relevant legislative requirements, not identified elsewhere on this agenda, with which the NEAs have failed to comply in the preparation and submission of the Section 1 Plan? If so, what are the consequences of that failure, and how can it be remedied?

- 7.4 No, Section 20(2) of the 2004 Act, as above

9) ***Do the Vision for North Essex and the Strategic Objectives provide an appropriate framework for the policies of the Section 1 Plan?***

(a) **Is it lawful for a Local Plan and its policies to require or encourage**

- (i) **new approaches to delivery and partnership working, and**
- (ii) **the sharing between the public and private sectors of risk and reward* from development?**

*** Participants are asked to note that the NEAs now propose to remove the reference to “risk and reward” from the Vision for North Essex (and from policy SP7).**

- 9.1 It can never be lawful to *require* a ‘new approach’; i.e. to have a situation where not to adopt a new approach is contrary to policy. First, because, the only relevant test is effectiveness of the approach chosen, not its novelty and, secondly, because such a requirement would be unreasonable for want of sufficient certainty.
- 9.2 It is dubious the extent to which it is even lawful to *encourage* a ‘new approach’ (i.e. to go beyond where policy is just explicitly permissive of new approaches) as it must be made clear despite that encouragement that it would not be contrary to policy not to adopt a new approach. The matter remains ambiguous, however, as such policy text would tend to indicate it as being a material consideration *in favour* of permission if a new approach is adopted; and a material consideration *against* if one is not. Again, given that the only relevant test is effectiveness, not novelty, that would be an unreasonable outcome.
- 9.3 It can never be lawful for permission to be contingent on the developer sharing his risk and reward with the public decision-making body. That is to offend the fundamental principle of Constitutional Law that appropriation by the Executive (here, the LPA) requires express Parliamentary sanction [see *AG v Wilts United Dairies* and *Congreve v Home Office* previously supplied]. This constitutional principle of English Law was established through the Civil War and enshrined in the 1688 Bill of Rights. So fundamental a principle is it that, again, it would not be lawful to have a policy that even encouraged such an approach as, as just noted above, failure to share reward could then be taken as a material consideration against a proposal – which would itself offend the principle.
- 9.4 It is noted that the NEAs, rightly, recognise that they must take out the offending passages. That is welcomed. However, this does not cure the objection to the Plan, as it is plain from all the issues covered in the other Matter sessions that the desire or intention by the NEAs to share reward underpins the whole logic of the approach to Garden Communities, their location (where it was thought land deals were in the offing), their scale (driven by the debt-heavy/interest farming approach to viability), their evidential basis, their SA assumptions and all of the public engagement that has been undertaken on the basis of this premise. This, then, goes directly to the soundness of the Plan: to remove the ‘risk and reward’ wording (which must be done if the Plan is to be lawful) removes what was in truth the whole foundation of the approach by the NEAs to identifying the Garden Communities and, in particular, the extraordinary proposition of a Plan committing to 43,000 dwellings in order to deliver 7,500 during the plan period.