

Stisted Action Group

Hearing statement for Matter 1 For hearing scheduled on 9th May 2018

Stisted Action Group (SAG) comprises more than 500 residents and supporters of the historic village of Stisted, which overlooks and is adjacent to the proposed development¹. Stisted will be severely, immediately and irremediably harmed by the proposed development.

Due to inadequacies in the process, Stisted has not had an opportunity to be consulted or to make its objections either to 'Monks Wood' and/or the proposed 'Garden Communities' as a whole. Whilst we are grateful to the Inspector for the opportunity to make this submission, it does not provide Stisted with a full and fair opportunity to be consulted and/or present our evidence and arguments². We specifically reserve all our legal rights in relation to these matters.

¹ SAG was initially formed in response to the consultation to develop the A120. One of the proposed routes (Option A) passed through Stisted. After thorough review, Option A was not put forward by the Councils for further consideration. SAG objects to any attempt to re-open consideration of the rejected A120 development routes and reserves all legal rights in relation to this matter.

² Consistent with Section 20 of the Planning and Compulsory Purchase Act 2004, the Inspector has allowed SAG to make a submission and appear at the special hearing in relation to Monks Wood. However, the Inspector has limited SAG's comments to procedural questions relating to the Plan process. SAG has had no opportunity to put forth substantive evidence of the harm that will befall the village from the proposed development. In particular, the Inspector has specifically deleted arguments and evidence in SAG's submission in relation to:

- the harm caused to Stisted by the proposed development;
- the fact that Stisted objects to MonksWood at any level of development;
- deficiencies of Plan outcome which are direct evidence of process/lack of cooperation by the Councils (such as the lack of appropriate provision for Schools, transport and utilities in the Plan); and
- substantive deficiencies in the Plan itself.

We have concerns that this makes the process and the record deficient. We reserve all rights in relation to this matter.

SAG supports the decision made by Braintree District Council **not** to include Monks Wood in the Plan, and the reasons for the decision. SAG is prepared to provide further substantive evidence of the harm which would be caused to Stisted by the proposed development to support the Council's conclusions.

However, SAG has concerns as to the sufficiency of the process undertaken in respect of the initial HCA Garden Community proposals and the robustness of the subsequent assessment of the Monks Wood proposal. We have reviewed the submissions made by CAUSE in relation to these matters. We generally support CAUSE's objections to the process and specifically adopt CAUSE's evidence and arguments in CAUSE Annex 4. There is substantial evidence that the overall Plan is not sound.

There is also a significant risk, due to the posture of these proceedings, that the issues addressed will focus on whether 'Monks Wood' should be permitted *in addition to* the other Garden Communities, rather than the appropriate question of whether the *overall* Plan is justifiable and effective and whether the proposed benefits of the proposed development significantly and demonstrably outweigh the costs.

We specifically object to any Plan rectification which 'inserts' MonksWood into the Plan for further consideration. Any decision to allow Lightwood's proposal to be approved as a result of a truncated or 'special' process – either now, or at any point in future - would subvert natural justice, impinge upon the rights of landowners and the neighbouring communities, such as Stisted, and result in a Plan which is even more over-reaching, impractical and unsound than the current version.

Please see below any of SAG's additional response and evidence in relation to the Inspector's questions.

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?

We agree with CAUSE (and adopt its arguments) that the requirements of the Duty to Cooperate were not met. The NPPF makes clear that Section 33A requires the NEAs to present robust proof of cooperation. According to the NPPF guidance, Cooperation “should produce effective policies on cross boundary strategic matters ... with concrete actions and outcomes. “ Such actions and outcomes are lacking in the Plan, and provide evidence of the lack of cooperation.

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?

We agree with the general proposal made by CAUSE that *all* appropriate strategic options for north Essex should have been evaluated at smaller scale. However, we support the Council’s determination that MonksWood should not be included in the Plan, at the scale assessed by the Council.

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

- (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?

We agree with CAUSE's analysis of this question, and we particularly note that this piecemeal approach would open the flood-gates to opportunistic proposals which would violate the rights of communities, such as Stisted, which would have no recourse against infill and opportunistic development in contravention of sound planning principles and the protection of historic and rural communities.

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

We support CAUSE's position that the question of 'specific combinations' of development is a red herring. The proper question is whether the Plan is robust and allows for appropriate development that is justifiable and sustainable and contributes to economic, social and environmental well-being. The review of ad-hoc proposals would encourage 'free-for-all' development and inappropriate outcomes. It will also run the risk of disenfranchising various stakeholders (particularly local communities) who would have no proper ability to consult and protect their natural rights. It would have the opposite effect of empowering communities to shape proposals to help them prosper.

- (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?

We agree with CAUSE's arguments in respect of this issue.

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)(c) – requirement to notify those who so request of the submission of the Local Plan to the Secretary of State
- v) Regulation 24 – requirement to give all those making representations six weeks' notice of the opening of the hearing sessions

(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?

SAG generally agrees with CAUSE's arguments in respect of these issues.

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

The Councils have taken a “decide first and consult tactically” approach which has prevented proper review of their analysis and papered over significant shortcomings in respect of the Plan. This has, in turn, resulted in breaches of specific regulations.

Of particular concern:

- Members of the public became aware of Lightwood’s plans in September 2016, outside the Preferred Options consultation period. Therefore, there was little, if any, consultation and proper review of the proposals, and no “re-review” of the Garden Communities as should have been required upon presentation of a substantial, new development;
- The insertion of Lightwood Strategic at a late date meant that important stakeholders – including the Parish Councils and communities which would be impacted by the proposals – had no meaningful opportunity to participate in the process.
- There has been no meaningful review of all potential development options, only a selected review of piecemeal options. As a result, it is possible that the outcomes selected have higher costs and fewer benefits than alternative approaches; and
- The analysis undertaken by the Councils (for example, the PWC report) in respect of their preferred options is facial and heavily redacted – there is no meaningful opportunity for review and challenge and the materials available to the public do not permit the level of review envisaged by the regulations. Indeed, it appears that the Councils have removed all criticism of the plans contained in the report. This is facial; SAG is making an immediate FOIA request for this information, and further requests that the Councils be required to provide the un-redacted materials as part of this hearing.

Nevertheless, we do not consider the rights of Lightwood to have been materially harmed by any of these potential failings. Lightwood has been given ample opportunity, since 18 January 2018, to participate in the process. Moreover, it is our position that the decision by Braintree Council not to include the Lightwood representations has resulted in a different outcome than if Lightwood had been included from the outset: its proposals should have been rejected.

We also agree with CAUSE that much attention has been given to Lightwood’s interests but less to those of the communities affected. In particular, if SAG and members of the Stisted Community had been aware that Lightwood continued to

promote Monks Wood through the Plan, then they would have been able to submit full hearing statements in response and to request attendance at the examination in public in January.

Unfortunately, the public only became aware of the councils' failure to submit Lightwood's representations to the Inspectorate through CAUSE PR (newspaper articles, social media and presentations at Bradwell, Stisted, Coggeshall parish council meetings and a Greenstead Green community group meeting since January). This is a clear failure of natural justice. As noted, Stisted will suffer immediate and irreparable harm if this proposal is allowed to proceed. However, we have not had any opportunity to present substantive evidence of harm related to the proposal.

On a practical note, Lightwood has been able to submit several documents and appendices promoting its proposal and was able to insert itself into week 2 of the Examination. There was no equivalent opportunity for SAG to do so.

- (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?

We agree with CAUSE's arguments in relation to this issue.

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?

This question misses the point. We agree with CAUSE's analysis: the problem is not whether the Councils may enact new approaches, or a sharing between public and private sectors of risk and reward, but *how* they do so.

The “decide first, analyse facially, consult tactically” approach taken here does not address significant conflicts of interest, divests local communities of power, and results in an unsustainable outcome which does not take proper account of the economic, social and environmental well-being of the community.