

Examination of the North Essex Authorities (NEA) Section 1 Plan

Andrewsfield New Settlement Consortium (ANSC)

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?

Question 1:

Is there clear evidence that, in the preparation of the Section 1 Plan, the 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?*

ANSC Answer 1:

- (a) (i) It is clear that the potential availability of the Monks Wood site was not identified by Lightwood Strategic to Braintree District Council (BDC) until 9th March 2016, approximately a year and a half after when the Call for Sites was conducted by BDC between August to October 2014. Notwithstanding the very delayed submission of the Monks Wood site to BDC in March 2016, BDC shared the Lightwood Strategic submission with the other NEAs on 10th March 2016. It is understood that BDC made repeated requests for

clarifications and further information relating to the Lightwood Strategic submission dated 9th March 2016 for Monks Wood, but the requested information was not forthcoming. The NEAs would only have been able to co-operate between themselves with the limited information provided by Lightwood Strategic. The NEAs did however review and assess the information that was submitted by Lightwood Strategic. Furthermore, the NEAs carried out a Sustainability Assessment of the potential development of a Garden Community at Monks Wood. There is no indication or evidence that the NEAs did not co-operate between themselves relating to the Lightwood Strategic submission for Monks Wood. Finally, it is of some note that, following the submission of details of the Monks Wood site by Lightwood Strategic to the DCLG as an expression of interest for Monks Wood to be a Garden Community, this was not accepted by the DCLG. Furthermore, BDC confirmed to DCLG that BDC did not support the Lightwood Strategic submission made to the DCLG.

- (a) (ii) The NEAs did not fail in any way to meet the requirements of the Duty to Cooperate with neighbouring authorities, or prescribed bodies, relating to the proposals by Lightwood Strategic for a Garden Community at Monks Wood. There is no requirement under the Duty to Cooperate for Local Authorities to inform neighbouring authorities or prescribed bodies of all potential alternative sites. The Monks Wood site has in any case been in the public domain including through, and as clearly rejected by, the Sustainability Assessment.

Question 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?*
- (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?*

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

(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 ?

ANSC Answer 2:

- (a) No, it was an entirely reasonable approach for the NEAs to assess the Monks Wood site on the basis of a Garden Community up to 15,000 homes. One of the key negative Sustainability issues for the Monks Wood site, access to employment opportunities, would remain regardless of the scale of a possible development at Monks Wood. The Sustainability Assessment made clear that Monks Wood was assessed up to 15,000 homes.
- (c) No, the SA assessment of combinations of three Garden Communities did not need to also consider the permutation of Monks Wood together with various scales of development at Colchester/Braintree Borders and Tendring/Colchester Borders. The SA provided clear reasons for rejecting Monks Wood, notably including poor accessibility from a single carriageway section of the A120. The SA also made clear the sustainability benefits of a dispersed pattern of Garden Communities, including a Garden Community with a western focus gaining access to employment opportunities to the western side of Braintree (and also Stansted). The SA did not therefore need to provide another and further permutation of three potential Garden Communities.

Question 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 Regulations¹ 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*
- (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?*
- (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?*

¹ Of the Town and Country Planning (Local Planning) (England) Regulations 2012, as amended.

ANSC Answer 7:

- (b) The steps taken to allow Lightwood Strategic to participate in the examination process are entirely reasonable and appear to ensure that the interests of Lightwood Strategic, as well as the interests of any other parties are not prejudiced. The interests of Lightwood Strategic, as well as all parties including the NEAs would have been enhanced through the early engagement by Lightwood Strategic at the initial Call for Sites stage of the Plan making process.

Question 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).*

ANSC Answer 9:

It is submitted that it is lawful for a Local Plan to encourage, although not to require, new approaches to delivery and partnership working.

ANSC supports the NEA decision to now remove the reference to “risk and reward” from the Vision for North Essex, and from policy SP7. Should any reference remain in the Local Plan to the sharing between the public and private sectors of risk and reward then such references should also be to provide support for, although not to require, such an approach.

Word Count (ANSC answers): 673

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