

NORTH ESSEX AUTHORITIES JOINT STRATEGIC (SECTION 1) PLAN

ADDITIONAL HEARING SESSION FOR MATTER 1

GALLIARD HOMES LIMITED

RESPONSE TO INSPECTOR'S QUESTION 9

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

(ii) the sharing between the public and private sectors of risk and reward from development?

1. The legal framework for the preparation of local plans is set out in the Planning and Compulsory Purchase Act 2004 (PCPA 2004). Section 17 (3) requires that local plans must set out the local planning authority's (LPA) policies relating to the development and use of land in their area, and states that:

"The local planning authority's local development documents must (taken as a whole) set out the authority's policies (however expressed) relating to the development and use of land in their area".

2. Section 15 requires LPAs to prepare and maintain the local development scheme.

3. The Town and Country Planning (Local Planning) (England) Regulations 2012 (2012 Regulations) - Regulation 5(1)(a) sets out that the documents to be prepared by LPAs for the local development plan, are documents that contain statements about:

i development and use of land which the LPA wishes to encourage;

ii the allocation of sites for a particular type of development or use;

iii any environmental, social, design and economic objectives relevant to achieving the development and use of land (specified at i. above); and

iv development management and site allocation policies, intended to guide the determination of planning applications.

4. The legal basis for the content of local plan policies is therefore broad and allows local planning authorities to bring forward such policies as they consider appropriate to achieve the above objectives. Within this context there is no reason why policies which encourage new approaches to delivery and partnership working should be considered to be unlawful.

5. In policy terms, paragraph 21 of the National Planning Policy Framework (NPPF) provides that in drawing up local plans LPAs should:

- set out a clear economic vision and strategy for their area which encourages sustainable economic growth;
 - set criteria or identify strategic sites, for local and inward investment;
 - support existing business sectors, and where possible, identify and plan for new or emerging sectors in their area. Policies should be flexible enough to accommodate needs that are not anticipated, and allow a rapid response to changes in economic circumstances;
 - plan positively for the location, promotion and expansion of clusters or networks of knowledge driven, creative or high technology industries;
 - identify priority areas for economic regeneration, infrastructure provision and environmental enhancement; and
 - facilitate flexible working practices such as the integration of residential and commercial uses within the same unit.
6. Paragraph 156 of the NPPF states that LPAs must set out in their local plan what their "*strategic priorities for the area*" are. These "*should include strategic policies to deliver*":
- homes and jobs needed in the area;
 - provision of retail, leisure and other commercial development;
 - provision of infrastructure for transport, telecommunications, waste management, water supply, wastewater, flood risk and coastal change management, and the provision of minerals and energy (including heat);
 - provision of health, security, community and cultural infrastructure and other local facilities; and
 - climate change mitigation and adaptation, conservation and enhancement of the natural and historic environment, including landscape.
7. Other relevant parts of the NPPF include:
- Paragraph 157 - states that local plans should be "*based on co-operation with neighbouring authorities, public, voluntary and private sector organisations*".
 - Paragraph 180 - requires LPAs to work "*in consultation with Local Enterprise Partnerships*" and to "*work collaboratively with private sector bodies, utility and infrastructure providers*" on strategic planning priorities to enable delivery of sustainable development.
 - Paragraph 181 - requires LPAs to demonstrate evidence of having effectively co-operated to plan for issues with cross-boundary impacts when their local plans are submitted for examination.
8. Set against these legal and policy requirements, it is difficult to argue that there is any legal or policy impediment to a local plan policy that encourages new approaches to delivery and partnership working. Indeed, the NPPF positively encourages co-operation and collaboration between the public and private sectors.
9. It must therefore follow that co-operation and collaboration between the public and private sectors is a key requirement to underpin any local plan policy which requires or

encourages new approaches to delivery and partnership working. In this regard we attach the full version of the letter from Galliard's solicitors (King & Wood Mallesons) dated 10 May 2016 which was submitted as a Supplementary Statement of Common Ground (SCG/011A) without the commentary on the Template Framework Agreement, now attached. Galliard's comments in support of the LDV approach (as set out in SCG/011A) were subject to receiving answers to the questions posed in the commentary on the Template Agreement. Galliard has not received any response to the letter dated 10 May 2016 or to the questions posed in relation to the Template Agreement. The detail of the proposed LDV structure therefore remains uncertain despite the questions raised almost two years ago.

10. Galliard therefore submit that, while we remain supportive of a public-private sector partnership approach to the delivery of the new settlement West of Braintree, there remain significant uncertainties over the proposed approach which have not been addressed by the North Essex Authorities. These include questions over the following:
 - How will the LDV be funded?
 - Who controls delivery of housing?
 - What infrastructure is to be provided through the LDV and when?
 - What are the costs of the infrastructure?
 - What is a "reasonable return" to landowners?
11. Galliard takes the view that, with its experience and track record of housing delivery, it is best placed to take a lead role in the delivery of the new settlement and that there is a need for much greater flexibility in the approach currently being taken by the North Essex Authorities. There are a wide range of approaches that may be pursued under the "LDV" terminology and this should be reflected in the wording of the local plan policy.
12. While there is nothing unlawful about a local plan policy requiring or encouraging new approaches to delivery and partnership working, it is not appropriate for the proposed local plan policy to dictate a specific approach, particularly where there are significant uncertainties and unanswered questions. Such approaches should be allowed to evolve through agreement between parties to reflect the requirements of different sites and their circumstances.
13. We note that the North Essex Authorities now propose to remove the reference to "risk and reward" from the Vision for North Essex (and from Policy SP7) and, for the reasons set out above, fully endorse this removal.

10 May 2016

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Dear Stephen

Boxted Wood

As we discussed last week, we act for Galliard Homes in relation to their sites at Boxted Wood, North Essex.

Thank you for giving our client the opportunity to comment on the Template Framework Agreement ("TFA") heads of terms for the proposed LDV. Galliard is very supportive of the objectives of the LDV and welcomes the spirit of public-private sector collaboration to bring forward the delivery of much needed homes in the North Essex area.

In order to demonstrate our client's commitment to the initiative and recognising the time constraints, we have only focussed on the key areas which we think will need to be explored in order to ensure that the TFA achieves its goals.

Galliard welcomes the public sector initiative to play a proactive role in bringing forward the garden communities, and indeed this is something that our client has advocated for many years. However, as a master developer and having been involved in promoting this site for more than 10 years, the Galliard team, with a wealth of experience in bringing forward new communities, would wish to be as closely involved in the LDV as they could be in order to plan and deliver the development most efficiently. It would therefore be helpful if you would please clarify the structure of the LDV and the extent of the potential involvement for master developers (as opposed to landowners) alongside the public sector, particularly in the area of delivery.

Our clients would like to understand what assumptions are being made in relation to what infrastructure is to be delivered by the LDV, how it is funded and the mechanisms for ensuring it is delivered when needed. While we appreciate that these are early days in the formation of the LDV, these are vital issues which will underpin the success of the project.

Our clients are also concerned that the TFA heads make no reference to the financial viability of the proposed development or a minimum return for the landowners/developers. We agree that individual Framework Agreements will need to be tailored to the terms of the option arrangements for each garden community. The precise mechanics of this will need careful thought.

Finally, due to the nature of the cross-border community and the fact that a number of landowners straddle both authorities, Galliard takes the view that the TFA heads also need to explore the role of Uttlesford which will be key to the delivery of the garden community. Please would you update us on Uttlesford's involvement?

We enclose a some initial observations on the TFA heads which highlight some areas for further discussion and Galliard looks forward to progressing this further with your clients.

With kind regards.

Yours sincerely



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Template Framework Agreement
North Essex Garden Communities
 28 April 2016

Explanatory note:

Where there are existing arrangements in place then the following terms of agreement may need to be amended.

1 Overall objectives and guiding principles

The aims of the parties are to:

- 1.1 promote the garden communities;
 - (a) in the local plan;
 - (b) in an application(s);
- 1.2 provide infrastructure for the garden communities; What do we currently know about what infrastructure is required?
- 1.3 ensure the delivery and long term integrity of the garden communities in accordance with the policies in the local plan;
- 1.4 secure the repayment of the infrastructure costs to the LDV and the Councils together with a payment for the services of providing the infrastructure; We need to understand the costs of providing infrastructure and the mechanisms for ensuring that infrastructure can be delivered in the most timely and cost effective manner.
- 1.5 return a reasonable value to the landowners and others with land interests. What is "a reasonable value"? What assumptions have been made in relation to the returns required?

2 Parties

The parties will be

- 2.1 land owners;
- 2.2 the Council;¹
- 2.3 the LDV.

Please provide further clarity on the structure of the LDV. Our understanding is that the LDV will be a principally public sector vehicle with subsequent engagement with landowners and developers. The Galliard team has a strong track record in delivering new settlements and urban extensions as a master developer and it seems sensible to capitalise on this experience as part of the LDV.

¹ Note: the relevant Councils will be involved in a number of capacities – planning authority, charging authority, acquiring authority etc.

Presumably, Uttlesford will need to be supportive of/involved both in the LDV and as local planning/housing authority?

3 Promotion obligations

Local Plan

- 3.1 All parties will use [all reasonable] endeavours to secure the adoption of the garden community allocation in the local plan. There needs to be a clear understanding about what this means.
- 3.2 The Council as planning authority will develop a masterplan in consultation with all parties.
- 3.3 The LDV and the landowners will support the masterplan throughout the local plan process.
- 3.4 The landowners will not object to any principles in the masterplan throughout the local plan process.

This is dependent on creating a robust and meaningful engagement with the landowners and the principles following agreed outline parameters to be embedded in the LDV.

Planning Application

- 3.5 All parties will use [all reasonable] endeavours to secure a satisfactory planning consent in accordance with the adopted² local plan and the agreed masterplan.
- 3.6 The LDV will develop the detailed masterplan alongside an infrastructure delivery plan. (as above).
- 3.7 The [LDV][landowners]³ will prepare and submit a planning application for the garden community as a whole in accordance with a programme agreed between the parties and reflecting the local plan policy requirements.
- 3.8 The [LDV][landowners] will prepare and submit a detailed planning application for a first phase of the garden community comprising a minimum of [500] new homes and associated infrastructure.⁴
- 3.9 The parties will enter into planning agreements to secure the delivery of the garden community in accordance with the adopted local plan.⁵ The terms will, of course, need to be subject to the viability of the scheme and the proposed planning obligations/CIL charging level.

² Note: the working assumption is that no application is determined until after adoption. Landowners should not make applications any earlier than submission.

³ Note: the preference is that the LDV should control the preparation of the application. Whether this is possible may depend, in part, on the existing land contract arrangements.

⁴ Note: the intention is that the first phase should be an exemplar development.

⁵ Note: If there is an "early" framework planning agreement setting out infrastructure and quality requirements then that will inform the CIL setting process and, together with the present agreement, should allow a low/nil CIL zone to be adopted for the site.

4 Provision of infrastructure

- 4.1 The LDV will deliver the infrastructure identified as required by the local plan in accordance with a programme agreed between the parties.⁶ There needs to be a greater understanding about how the infrastructure will be delivered with guaranteed milestones for delivery and underwriting arrangements if those milestones are not achieved. In addition, if delivery of infrastructure is within the control of the LDV, then there should be no restriction (Grampian condition/Section 106 restriction or otherwise) preventing the build out of the development.
- 4.2 The LDV will fund the cost of the provision of the infrastructure required to be provided by the local plan. How? The funding sources need to be identified and guaranteed. Just as the LDV is looking for security from Galliard and the landowners, so there should be a reciprocal security to guarantee the delivery of infrastructure.
- 4.3 All parties will use [all reasonable] endeavours to:
- (a) secure grant funding for the infrastructure;
 - (b) secure payment or part payment from third parties including the utility providers and those outside the garden community benefitting from the infrastructure.

Securing grant funding and part payment from third parties is principally a public sector function. The landowners will support the LDV in achieving this but it should primarily be the function of the local authorities.

- 4.4 The parties will ensure that affordable housing is provided in accordance with the provisions of the adopted local plan. Subject to housing need and viability.

5 Development of garden community

- 5.1 A programme will be agreed between the parties with the objective being to maximise the speed of delivery of the garden community consistent with achieving the quality of development identified in the Local Plan and the landowners will offer the land for sale in accordance with that programme. There needs to be a clear understanding about what is proposed here and how it will work in practice.
- 5.2 The land shall only be offered for sale in accordance with a marketing and development brief agreed between the parties.
- 5.3 The marketing and development brief shall be first prepared by the LDV and may include, for example, terms requiring the site to revert to the LDV if it is not developed in accordance with an agreed programme.
- 5.4 The LDV shall be entitled to include provisions, enforceable by the LDV, in any contract for the sale of land that ensures that the garden community objectives are met. We are unclear about what this means. Please would you illustrate the types of provisions you have in mind? Is this principally about ensuring delivery?

⁶ Note: there will need to be provision for landowner step in rights in case the LDV fails to deliver the necessary infrastructure.

- 5.5 Land sales will be controlled by the LDV, and land shall not be sold by any landowner other than with the approval of the LDV. Sales should be permitted provided the "garden community objectives" are safeguarded.
- 5.6 If required the LDV shall be entitled to acquire for the purposes of marketing any land on payment of [market value].
- 5.7 The landowners will offer to transfer to the Council (or a nominee) at nil cost all land required for community and other specified purposes.
- 5.8 As security the LDV shall be granted an option to acquire the land, the option is exercisable if a landowner:
- (a) fails to offer development land for sale;
 - (b) fails to transfer non development land;

The option shall be released in relation to development land upon an undertaking being provided that receipts from any sale will be held for repayment in accordance with the following paragraphs.

- 5.9 All net proceeds from the sale of any interest in the land shall be paid to the LDV and shall be allocated as follows:
- (a) [***%]
 - (i) first, repayment of the local plan promotion costs;
 - (ii) second, repayment of the planning application promotion costs;
 - (iii) third, repayment of the costs of infrastructure provision;

in all cases with interest at an agreed rate
 - (b) [***%] allocated to the landowners for distribution on the basis of the proportion that the area of their ownership bears to the total area of the garden community.

What percentages are proposed for (a) and (b)? Whatever is agreed will need to be consistent with the relevant options.

- 5.10 When the costs in the preceding paragraph have been repaid all subsequent net proceeds from the sale on any interest in the land shall be allocated as follows:
- (a) [***%] to the LDV for the provision of the infrastructure. What is the percentage?
 - (b) the balance to the landowners for distribution on the basis of the proportion that the area of their ownership bears to the total area of the garden community.

6 Ancillary obligations

- 6.1 Provisions to deal with "hold out" land owners:
- (a) no obligation to provide services and/or access until appropriate pro-rata payment secured;

- (b) obligation to provide services and/or access when pro-rata payment secured.
- 6.2 Unless the parties agree or the local plan allocation boundaries require otherwise the garden community shall be within the boundaries shown edged red on the [attached plan⁷].
- 6.3 The Council as charging authority will use any CIL collected in relation to the development on infrastructure associated with the garden community.
- 6.4 The Council will exercise powers of CPO, in principle, in order to secure the delivery of the garden community.
- 6.5 The Council will use CPO and appropriation powers, in principle, to ensure that clean and marketable title to the site is secured.
- 6.6 The LDV will have capacity to acquire land in the garden community ahead of it being needed for development.
- 6.7 All parties will act in good faith.
- 6.8 Nothing in the agreement fetters the functions of the Council as local planning authority.
- 6.9 The agreement will terminate if the garden community is not allocated.

⁷ Note: plan will need to be agreed