

**NORTH ESSEX AUTHORITIES
Shared Strategic (Section 1) Plan****Inspector:** Mr Roger Clews**Programme Officer:** Mrs Andrea Copsey**Tel:** 07842 643988**Email:** copseyandrea@gmail.com**Address:** Examination Office, PO Box 12607, Clacton-on-Sea, CO15 9GN

FURTHER EXAMINATION HEARINGS, JANUARY 2020**GUIDANCE NOTE FROM THE INSPECTOR**

Further hearings, as part of the examination of the Shared Strategic (Section 1) Plan, will open at 9.30am on Tuesday 14 January 2020.

Purpose of this note

1. The purpose of this Guidance Note is to set out the reasons for, the scope of, and the arrangements leading up to the further examination hearing sessions, including the arrangements for the submission of hearing statements.
2. I will issue another guidance note, dealing with procedure at the hearings, in December.
3. Please also read the following documents, which give additional relevant and background information:

Inspector's Matters, Issues and Questions for the Further Hearings [IED019]

Further Hearings Programme [IED018]

Inspector's Response to NEA015 [IED017]

Public Consultation – Inspector's Explanatory Note [IED016]

North Essex Section 1 Plan Hearings Guidance Note [IED004] – paras 1-10

All these documents are available on page 4 of the examination website:

https://www.braintree.gov.uk/info/200643/section_1/1065/section_1_examinati_on_publication_local_plan_braintree_district_colchester_borough_and_tendring_district_council

Annex A to this note provides a list of other relevant background documents and where to find them.

Reasons for the further hearing sessions

4. The original examination hearings in January and May 2018 considered the soundness and legal compliance of the North Essex Authorities' [NEAs] Section 1 Plan. Following the hearings, I wrote a post-hearings letter to the NEAs on 8 June 2018 [IED011], identifying a number of shortcomings in the Plan and its evidence base, including the Sustainability Appraisal.
5. In response to my interim findings, the NEAs produced a series of additional evidence base documents, including an Additional Sustainability Appraisal.

These were published, together with amendments to the Plan suggested by the NEAs, for public consultation in August and September 2019.

6. The purpose of the further hearing sessions is to enable me to gain additional information in order to be able to determine whether or not the Section 1 Plan is sound and legally-compliant. Accordingly, the further hearings will focus on the documents that the NEAs published for consultation in August and September 2019.
7. I have all the written comments made on the published documents during the public consultation, and I will take them all into account when coming to my conclusions on the soundness and legal compliance of the Plan. I will also take into account everything that was said at the original hearing sessions in January and May 2018, and in all the written representations that have been made since the Plan was published in June 2017. Consequently, there is no need for any of those earlier comments and representations to be repeated during the further hearing sessions.
8. My Matters, Issues and Questions [MIQs] document for the further hearings [IED019] sets out the topics for the further hearing sessions, the issues for consideration, and the questions on which I am seeking further information.

Participation in the further hearing sessions

9. Version 1 of the Further Hearings Programme [IED018] gives the dates for the further hearing sessions and a list of those I am inviting to participate, because I consider that their contributions will assist my consideration of the plan. I have allocated participants to the sessions according to the relevance of their comments to the matters, issues and questions for each hearing.
10. If you think you should have been included in the list of participants for a particular session (for example, because your comments bear directly on one or more of the matters, issues and questions for that session), please email or write explaining why to the Programme Officer [PO], Andrea Copsey, whose contact details appear above, by Friday 22 November 2019, and I will review the situation.
11. Anyone is welcome to attend the further hearing sessions and listen to the discussion, but only the invited participants may take part.

Hearing statements

12. Participants in the further hearing sessions may submit hearing statements if they wish. However, **this is not obligatory**. Statements will only be helpful to me if you have something to add to what was said in your original response to the public consultation.
13. If you do submit a statement, please keep it as short as possible. It should deal only with any questions in my MIQs document that are relevant to your original response. If the answer to a question is contained in your original comments, please do not repeat them: just provide a reference to them. Statements should not contain new evidence unless that evidence was unavailable when your original comments were made. A separate statement should be submitted for each hearing session. See **Annex B** to this Note for further guidance on preparing and submitting statements.

14. Statements should be **no more than 3,000 words long** and must be received by email by the Programme Officer **by 5pm on Monday 2 December 2019**. Any statement not meeting these requirements will be returned. Please also provide **one hard copy** of your statement to the PO by the same date.
15. The NEAs are asked to respond to each of the questions in my MIQs document. For this reason, the 3,000-word limit does not apply to their statements. But they must be submitted to the Programme Officer by the same deadline of **5pm on Monday 2 December 2019**.
16. Hearing statements will be published on the examination website on Tuesday 3 December 2019.

Responses to hearing statements

17. The NEAs and the other participants in the further hearing sessions may also submit responses to hearing statements. Responses should not be used to repeat what has already been said in hearing statements. You should only submit a response if you wish to address any new point(s) that have been raised in the statements. In doing so, please identify the point(s) you are addressing and the statement(s) in which they occur. Please do not submit any new evidence with your response.
18. Any responses to hearing statements, including from the NEAs, should be **no more than 1,500 words long** and must be received by email by the Programme Officer **by 5pm on Monday 16 December 2019**. Please also provide **one hard copy** of your response to the PO by the same date.
19. Responses to hearing statements will be published on the examination website on Tuesday 17 December 2019.

Statements of common ground

20. Statements of Common Ground, agreed between two or more hearing participants (including the NEAs), will be welcome. They should identify the points that are agreed by, or that remain in dispute between, those participants, so as to enable the hearing session to concentrate on the key issues that need further discussion. Any Statements of Common Ground should arrive with the PO **by Monday 2 December 2019**.

Further documents published on the examination website

21. To assist discussion at the hearing sessions, and in order that participants may take them into account in preparing for the hearings, I have arranged for a series of documents to be published on new page 10 of the examination website: *Further Documents Requested and Accepted by the Inspector*. They are:
 - The NEAs' answers to my clarification questions on their additional evidence base documents – [EXD/049]
 - Further documents provided with the NEAs' answers to my clarification questions – [EXD/050, 051, 052 & 053]
 - The Business Case for the NEAs' successful bid to the Housing Infrastructure Fund for funding to support the proposed Tendring Colchester Borders Garden Community [GC] – [EXD/054]

- Documents referenced in the NEAs' topic paper *Build out rates in the Garden Communities* [EXD/082] – [EXD/055, 056 & 057]
- Additional viability assessments and additional details of submitted viability assessments – [EXD/058, 059, 060, 061, 062, 063, 068 & 069]. See paragraphs 35 to 45 below for further explanation of why these have been published, and of how they will be considered at the further hearing sessions
- A redacted version of the PwC report *North Essex Garden Communities* (14 Dec 2016) together with relevant email correspondence between the PO and the NEAs [EXD/064]
- Letters from CAUSE, the NEAs and NEGC about NEGC's engagement programme [EXD/065]
- The NEAs' email to the PO of 5 November 2019 regarding Essex County Council's consultation on proposals for a Rapid Transit System and A133/A120 link road, and Highways England's consultation on A12 widening proposals [EXD/066]
- November 2019 Update to EB/070 – *Summary of land ownership in respect of the proposed garden communities* [EXD/067]

22. Please contact the PO if you have any queries on the status of the published documents.

National planning policy and guidance

23. Because the Plan was submitted for examination before 24 January 2019, the policies in the version of the National Planning Policy Framework [NPPF] published in March 2012 apply for the purposes of my examination¹. Similarly, any previous national Planning Practice Guidance which has been superseded since a new version of the NPPF was published in July 2018 will also continue to apply².

Suggested amendments to the Plan [EB/091]

24. One of the documents published for consultation in August and September 2019 is a list of suggested amendments to the Plan prepared by the NEAs [EB/091]. The document provides reasons why each amendment is being suggested. In some cases they flow from discussions at the original hearing sessions, or from the views I set out to the NEAs in my letters of 8 and 27 June 2018 [IED011 & IED012].

25. The suggested amendments are not part of the submitted Plan that I am examining. Any change that materially affects any of the submitted Plan's policies may only be made if I consider it is necessary to make the Plan sound or legally-compliant, and recommend it in my report on the examination. If I consider it necessary, I may decide to recommend changes to the submitted Plan which are not part of the NEAs' suggested amendments. All the changes which I may propose to recommend (known formally as "main modifications") will be subject to public consultation before I complete my report.

26. Many of the NEAs' suggested amendments are relevant to matters which will be discussed during the first two weeks of the hearing sessions. It is likely that those suggested amendments will be discussed at those sessions. I am also arranging a hearing session on Thursday 30 January 2020 specifically to consider the NEAs' suggested amendments, and the need for any other changes to the Plan.

¹ See paragraph 214 of the current (February 2019) version of the NPPF.

² See <https://www.gov.uk/government/collections/planning-practice-guidance>

Scope of discussion at the further hearing sessions

27. The questions in my MIQs document [IED019] set the scope for the discussion at the further hearing sessions. Not all the issues that were raised in the comments on the NEAs' additional evidence base documents will be discussed. In most cases this is because I consider that I already have enough information, from the original hearing sessions and all the written representations I have received throughout the examination, to reach a conclusion on those issues in my report. It may be helpful if I explain why I have decided not to include questions on certain issues.
28. A large number of comments were about the **consultation arrangements** themselves, including what were felt to be difficulties in using the consultation portal, inadequate publicity, the volume and complexity of the documents, and the inconvenient timing of the consultation. I do not doubt the sincerity of those comments. Nonetheless, almost 1,000 responses were made directly to the consultation from a very wide range of organisations and individuals, and more than 2,000 further individual responses were collected and submitted by organisations including CAUSE, Residents of Kelvedon and of Braintree District, and Wivenhoe Town Council.
29. Each of the NEAs has produced an addendum to their Consultation Statement³ which makes it clear that they carried out the consultation in accordance with their Statement of Community Involvement. The consultation period lasted six weeks, the same as the statutory period allowed for representations to be made on a plan before it is submitted for examination⁴. While not every household may have received door-to-door distribution of publicity material, I consider it very unlikely that anyone's interests have been substantially prejudiced through any lack of opportunity to comment on the NEAs' additional SA, evidence base documents, or suggested amendments to the Plan.
30. Having said that, I am aware of wider concerns about engagement raised by various respondents to the public consultation (for example, CAUSE, Mr M O'Connell, Wivenhoe Town Council). In view of the fact that community engagement is a principle of the North Essex Garden Communities Charter, **in my MIQs document** I have asked the NEAs to provide a written statement responding to those concerns.
31. A substantial number of comments were about **detailed route options** contained in the document *Rapid Transit System [RTS] for North Essex: from Vision to Plan [EB/080]*, particularly the route options involving Lexden Road in Colchester and Flitch Way to the west of Braintree. Discussion of the RTS at the hearing session on Thursday 16 January 2020 will not be about detailed route options: that would not be appropriate at the examination of this Plan. Instead the discussion will be about the overall feasibility and viability of the RTS and the role it is expected to play in relation to the proposed garden communities.
32. The issue of **housing need** was examined at the original hearing sessions and I set out my views on it in my letter to the NEAs of 27 June 2018 [IED/012]. In that letter I reserved the right to modify my views in the light of any further

³ Documents SDBDC006a, SDCBC006a & SDTDC006a

⁴ Regulations 17 & 19 of the *Town and Country Planning (Local Development) (England) Regulations 2012* (as amended).

evidence that might come forward before the examination ends. It is therefore appropriate to consider, at the further hearing sessions, whether there is any new evidence that might justify revising my view that submitted policy SP3's housing requirements are soundly based. That might include, for example, further demographic evidence, including on the factors giving rise to Unattributable Population Change in Tendring, and further evidence on market signals and affordability. My questions for the relevant hearing session on Tuesday 14 January 2020 explore these issues.

33. However, I am not inviting discussion at the further hearing session on whether or not the housing requirements in the Plan should be based on the standard Local Housing Need [LHN] method set out in the February 2019 NPPF. The LHN method is not part of the March 2012 NPPF, whose policies apply for the purposes of my examination (see paragraph 23 above). Consequently, there is no expectation in national planning policy that the LHN method should be used as the basis for the housing requirements in the Plan.
34. As explained in my Guidance Note for the original hearing sessions [IED004], it is not part of my role to examine the soundness of "**omission sites**": that is, sites which have been put forward by their owners or promoters, but which were not selected by the NEAs for allocation in the Plan, or in their Section 2 Plans. The merits of any such sites will not, therefore, be discussed in detail at the further hearing sessions. The focus of the further hearings will be on the implications of the NEAs' additional evidence base documents for the soundness of the proposed garden community allocations in the Plan.

Viability evidence

35. One of the additional evidence base documents which the NEAs published for consultation was a *Viability Assessment Update* [VAU] by Hyas (June 2019) [EB/086 1/2 – *Main Report*, and EB/086 2/2 – *Technical Appendices*].
36. Unlike the original Hyas Viability Assessment [VA] of June 2017, the 2019 Hyas VAU assessed the proposed West of Braintree GC on the basis of total delivery of 12,500 dwellings – including an additional part of that GC in Uttlesford District that is proposed in the emerging Uttlesford Local Plan.
37. For consistency with the West of Braintree GC proposal in the submitted Plan, and with the 2017 Hyas VA, I have asked the NEAs to prepare an additional viability assessment of the West of Braintree GC based on total delivery of 10,000 dwellings. That additional viability assessment has been published in **EXD/058** – *Supplementary Information* to the 2019 Hyas VAU.
38. Each of the proposed GCs was assessed in the 2019 Hyas VAU based on delivery of 300 dwellings per annum [dpa]. I have asked the NEAs to prepare additional viability assessments of each proposed GC based on delivery of 250dpa, as recommended in my post-hearings letter to the NEAs of 8 June 2018 [IED/011]. Those additional viability assessments have also been published in **EXD/058**.
39. Six other assessments, or model-based analyses, of the viability of one or more of the proposed GCs were submitted with, or referred to in, responses to the consultation on the NEAs' additional evidence base documents: from GL Hearn on behalf of Andrewsfield New Settlement Consortium and Countryside Properties; from CAUSE; from WYG on behalf of Galliard Homes; from Carter Jonas on behalf of L&Q, Cirrus Land and G120; from North Essex Garden Communities [NEGC]

Ltd; and from Mr M O'Connell. While these other viability assessments are not part of the evidence base on which the NEAs are relying, they are relevant to the consideration of the viability of the proposed GCs.

40. I have asked for further details of these other viability assessments to be provided, in order to assist understanding of them. The further details are as follows:

EXD/059: Excel spreadsheets and explanatory notes provided by CAUSE to support their *Consultation Response on EB/086 Viability Assessment*.

EXD/060: Excel spreadsheets exported from the Argus Developer appraisals by Gerald Eve on behalf of Galliard Homes. The Excel spreadsheets show the cashflows for the appraisals summarised at Appendices 2, 3 and 4 of the Gerald Eve September 2019 viability submission (Appendix 1 to WYG's *Comments on NEAs' Section 1 Viability Assessment* on behalf of Galliard Homes).

EXD/061: A *Viability Analysis Report* (October 2019) by Savills, as referred to in paragraph 6.6 of Carter Jonas's *Representations to the Braintree, Colchester and Tendring Technical Section 1 Examination Consultation* on behalf of L&Q, Cirrus Land and G120.

EXD/062: Appraisal summaries and worksheets, with explanatory notes, providing details of the *Viability Evidence on behalf of North Essex Garden Communities* by Avison Young, submitted with NEGC Ltd's comments on the 2019 Hyas VAU.

EXD/063: Email dated 24 October 2019 confirming the NEAs' position on the status of the NEGC viability evidence.

EXD/068: Full details of the viability appraisal by GL Hearn referred to in their *Review of Hyas Viability Assessment*, submitted with their comments on the 2019 Hyas VAU on behalf of Andrewsfield New Settlement Consortium and Countryside Properties.

EXD/069: Further details of the sensitivity assessments of the 2019 Hyas VAU referred to in Mr O'Connell's paper *North Essex Garden Communities Viability – West of Braintree*.

Viability technical seminar

41. Because of the volume of viability evidence submitted, and the different assessment methods and assumptions employed, I have decided to arrange a technical seminar on Tuesday 21 January 2020, the day before the hearing session on viability. The purpose of the technical seminar will be to provide clarification of the methodology and assumptions underpinning the viability evidence, thus saving time during the hearing session itself.
42. All the participants who are invited to the hearing session on viability are also invited to attend the technical seminar, and it will be open to anyone to observe. Those participants who have submitted viability assessments (the NEAs, Andrewsfield New Settlement Consortium and Countryside Properties; CAUSE; Galliard Homes, L&Q, Cirrus Land and G120, NEGC Ltd, and Mr M O'Connell) will be asked in turn to give a brief outline of the methods and assumptions they have employed, based on papers submitted in advance. I and the other participants

will then be able to ask them questions of clarification.

43. It will not be appropriate for parties to criticise one another's viability assessments at the technical seminar. Discussion of the implications of the viability evidence for the soundness of the Plan will take place at the viability hearing session on Wednesday 22 January 2020.
44. See my MIQs document for details of the information which I am asking those participants who have submitted viability assessments to provide in their papers for the technical seminar. Papers should be emailed to the Programme Officer **by 5pm on Monday 16 December 2019**. They will be published on the examination website on Tuesday 17 December.
45. Further details of the procedure for technical seminars appears in the Planning Inspectorate's *Procedure Guide for Local Plan Examinations* – see Annex A below.

Roger Clews

Inspector
November 2019

ANNEX A

Sources of relevant documents and advice

A. Examination webpages

The Examination webpages are hosted by Braintree District Council and available via this link:

https://www.braintree.gov.uk/info/200643/section_1/1065/section_1_examination_publication_local_plan_braintree_district_colchester_borough_and_tendring_district_council

If you do not have access to the internet, documents and other information can be obtained from the PO whose details appear on page 1 above.

B. National planning policy and practice guidance, and procedure guidance from the Planning Inspectorate

See: <http://www.planningportal.gov.uk/planning/planningsystem/localplans>, which provides links to the following:

- The *National Planning Policy Framework*, March 2012 (see paragraph 23 above)
- The series of national Planning Practice Guidance documents
- *Procedure Guide for Local Plan Examinations* (The Planning Inspectorate, 5th edition, June 2018)

C. Relevant legislation

These documents can be found at <http://www.legislation.gov.uk/>:

- *Planning and Compulsory Purchase Act 2004*
- *Planning Act 2008*
- *Local Democracy, Economic Development and Construction Act 2009*
- *Localism Act 2011*
- *Housing and Planning Act 2016*
- *Neighbourhood Planning Act 2017*
- *The Town and Country Planning (Local Development) (England) Regulations 2012 [SI No 2012/767]*
- *The Environmental Assessment of Plans and Programmes Regulations 2004 [SI No 2004/1633]*
- *The Conservation of Habitats and Species Regulations 2017 [SI No 2017/1012]*

This document can found at:

<http://ec.europa.eu/environment/eia/sea-support.htm>:

- *European Directive on Strategic Environmental Assessment (2001/42/EC)*

ANNEX B

Format for hearing statements and responses to hearing statements

- A. Anyone submitting a hearing statement should email **an electronic copy** in PDF or Word format, and send **one paper copy** to the PO for the Inspector.
- B. Statements should be succinct, avoiding unnecessary detail and avoiding repetition of the original representation. **No hearing statement should be longer than 3,000 words** (except for the NEAs'). Longer statements will be returned by the PO for editing. A limit of **1,500 words** applies to responses to hearing statements.
- C. Statements should be prepared on A4 paper, printed on both sides and not bound, just stapled. Any photographs should be submitted in A4 format and should be annotated (on the back or front).
- D. All the Submission Documents, the evidence base, additional evidence base documents and supporting documents for the Section 1 Plan are available on the Examination website. Participants should not attach copied extracts from those documents to their hearing statements, but should simply refer clearly to the document number or title and the relevant page or paragraph.
- E. Please do not submit appendices to hearing statements unless they are essential. The statement should make it clear why they are relevant. Appendices should have a contents page and be paginated throughout. The 3,000-word limit does not include the text in appendices, but they should also respect the aim of succinctness.
- F. All participants must adhere to the deadline for submitting statements:
 - Any hearing statements must be received by the PO by **5pm on Monday 2 December 2019**.
 - Any responses to hearing statements must be received by the PO by **5pm on Monday 16 December 2019**.
- G. **Late submissions and additional material are unlikely to be accepted after this deadline, including on the day of the relevant session**, since it can cause disruption and result in unfairness to other participants, and could result in the hearing being adjourned.