

North Essex Authorities' Position Statement on State Aid**Summary**

1. This note provides a brief summary of the application of state aid law to the North Essex garden community proposals. It concludes that there is no legitimate objection to the Section 1 Local Plans on state aid grounds.

State aid

2. State aid is an advantage granted by a public authority through state resources on a selective basis to an undertaking in a way that could potentially distort competition and trade in the European Union.
3. State aid rules can apply to the following (and other) forms of assistance:
 - a. grants;
 - b. loans;
 - c. tax breaks;
 - d. the use or sale of a state asset at less than market value.
4. State aid may fall within an exemption and therefore permissible. It may be notified to the EU and cleared. If state aid is not notified, is not within an exemption and is found to be unlawful the recipient will normally be required to repay the state aid.
5. State aid rarely arises in relation to policy or plan-making unless the aid is a direct and inevitable consequence of the policy or plan. Even where the conditions for state aid exist in principle consideration needs to be given to whether the aid is part of the object or nature of the scheme. If so it will not normally be treated as aid.
6. So far as we are aware there have been no cases where a local plan proposal or policy has been found "unsound" as a consequence of state aid issues.

Timing for consideration of state aid

6. When the detailed delivery mechanisms for the garden communities are discussed and decided, state aid issues will be addressed. The delivery mechanisms will either have to be state aid compliant, fit within an appropriate exemption or approval will need to be sought from the Commission.
7. There is no reason to believe, and certainly no evidence to suggest, that a state aid compliant approach to delivery cannot be achieved.

NEA Local Plans Section 1: identification of broad locations

7. The North Essex Local Plan Section 1 identifies three broad locations for garden communities. There is no conceivable way in which the identification of a broad location for development on land outside public ownership can amount to state aid.

Choice of delivery vehicle

8. Section 1 of the Local Plans makes it clear that the North Essex Authorities (NEAs) have considered a number of delivery options. It is not prescriptive about the method of delivery. That approach to delivery cannot reasonably give rise to any state aid concern at the Local Plan level.
9. The available options include the delivery of one or all of the garden communities by the private sector acting independently within the development plan framework. That would clearly not result in any state aid.
10. The NEAs have indicated a willingness to explore either direct delivery of the garden communities by local delivery vehicles (LDV) (using existing local authority powers) or the promotion of a locally-led new town development corporation. The commitment is intended to demonstrate that the development of garden communities will occur even in the absence of a willing private sector promoter. It is evidence that mechanisms exist for the public sector to step in, if appropriate, to secure delivery of the garden communities.

11. Since the Local Plan examination, the New Towns Act 1981 (Local Authority Oversight) Regulations 2018 have been made (the Regulations). Guidance on the Regulations was issued in June 2018. Draft CPO guidance has been issued. There is now a clear structure within which locally-led garden communities (LLNTDC) can be brought forward. It is a structure that the Government believes is capable of being state aid compliant.
12. It is proposed that any LDV or LLNTDC will be publicly held. They will invest in infrastructure and will endow stewardship arrangements to support the garden communities. They will sell land for development at market value. There is no component of state aid in arrangements of this type.
13. The LDVs and the LLDC may transact with or joint venture with the private sector. If so they will do so on commercial terms. There is no state aid issue arising out of commercial transactions.

Financial modelling

14. As part of the evidence base for the examination, the NEAs have provided further financial modelling of the viability of the proposed garden communities. That modelling assumes that any investment in, or loans to, any delivery vehicle will be made on market economy operator principles (MEOP) basis. If investment and/or loans are made on an MEOP basis it is not state aid.
15. In considering the appropriate terms of any investment or interest, consideration will need to be given to the nature and structure of any local authority vehicle and/or development corporation. That will take account of the capitalisation arrangements for the company, the land ownership position (including the security offered by land controls), the residual responsibility for any liabilities on termination of the delivery vehicle and the prevailing European Commission state aid reference rates. The Regulations specify that the local authorities comprising the oversight authority are ultimately responsible for the liabilities of the LLNTDC. That will be taken into account in identifying appropriate reference rates.

16. It is believed that the modelled approach and the identified interest rates represents an MEOP compliant approach for the proposed delivery arrangement. That conclusion is supported by the soft market testing that has been carried out on behalf of the NEAs.
17. The model assumes that government grant will be given to fund infrastructure related to the two of the garden communities. Grant will not be provided unless it is state aid compliant. Factors indicating compliance include:
 - a. the public sector nature of the grant recipient – the grant could be characterised simply as the transfer of funds within the overarching UK State;
 - b. the extent to which the infrastructure benefits the wider public;
 - c. any land benefitting from public infrastructure will be sold on at market rate.
18. The proposed grant does not engage any state aid concern.
19. At present the modelling does not assume that there will be a need for any public sector guarantees. If guarantees are proposed they would need to be appraised to ensure that they were state aid compliant.

Government investment

20. The Government has committed to significant investment in the transport network in North Essex. The A12 and A120 will both be upgraded. Both schemes are identified requirements to meet future growth regardless of the garden communities. The A12 is funded. A final decision on the A120 upgrade is anticipated in due course.
21. National infrastructure generally benefits the public at large. Unless it clearly and directly offers an advantage to one or more organisations it will not be state aid. There is no realistic suggestion that either the A12 or the A120 projects (or any other identified investment) amounts to state aid.

Land Acquisition

22. If either the LDV or the LLNTDC route is followed then land will either be purchased voluntarily at market value, or will be compulsorily acquired. If compulsorily acquired the general principles of compensation require market value to be paid. If acquired by the local authorities it will be transferred to the LDV at market value. If market value is paid for land the transaction cannot be state aid.

Conclusion

23. Unless state aid is a direct and inevitable consequence of the development plan approach it cannot, properly, be a basis for finding the plan unsound. There is no evidence to suggest that aid is a consequence of the proposed approach.
24. In relation to each of the elements of state aid the proposed arrangement will not:
- a. offer any advantage through state resources;
 - b. advantage, on a selective basis, any identified undertaking or class of undertaking;
 - c. distort competition and trade in the EU.
25. Each of these elements needs to be met for a transaction to amount to state aid. None are met.
26. In any event, any consideration of state aid is premature. State aid issues will be considered (if any), fully and properly, when the approach to delivery of the garden communities is settled.

North Essex Authorities

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