



18 October 2019

Mr Adrian Pritchard
NEGC Consultation on Garden Communities
Colchester Borough Council
Rowan House
33 Sheepen Road
Colchester
Essex
CO3 3WG

Dear Mr Pritchard

I am instructed by CAUSE to write to you in connection with the engagement programme launched by NEGC Ltd only one week after the statutory Local Plan consultation of the North Essex Authorities closed, and before Examination of the Plan, which is both premature and confusing.

CAUSE seeks answers to the following questions. Until we have received satisfactory responses, we feel unable to participate in the meeting we have been invited to with Thinking Places.

1. **Adoption of a closed mind conclusion.** The way that the press release is phrased suggests that the 'garden communities' are a foregone conclusion. Any reasonable observer would conclude, with the launch of NEGC Ltd's engagement programme, that decisions have already been made and that the summer 2019 technical consultation was a meaningless exercise. This is to undermine the very important process yet to be concluded by the Inspector in reviewing both the extensive new material prepared by the Councils, and the recently concluded consultation upon it.

What reassurances can you give the public that participation in the NEGC Ltd engagement programme could bring about a change in direction, for example a shift towards Inspector's Option 1, the removal of one or more of the 'garden communities' or a reduction in their size?

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2. **Conscientious consideration of consultation responses.** The Gunning Principles require ‘conscientious consideration’ to be given to consultation responses before a decision is made. The SEA Directive states, in paragraph 7.4, that *“the results of the consultation have to be taken into account when the decision is being made.”*

In addition, conscientious consideration has not been given to previous consultations. The 2018 Issues & Options DPD consultation responses have never been analysed, and the Land Use Consultants Stakeholder Workshop feedback has not been taken into account in the Additional Sustainability Appraisal. It was listed, but nothing further said.

Has legal or other advice been sought about the legality and legitimacy of NEGC Ltd taking further steps to promote the NEA proposals, before the Inspector has had the opportunity to review consultation responses?

3. **Parallel processes.** The public is confused. Why is this engagement taking place now, wasting stakeholder including public money before the plan is considered further by the Inspector whose conclusions could be to determine that the Part 1 Plans cannot be made sound? NEGC Ltd and the NEAs had the opportunity to participate in public events during the ‘Technical consultation’ but did not wish to.

Residents do not distinguish between NEGC and the NEA. NEGC Ltd is owned and financed by the authorities, and the board includes a senior councillor from each authority. The purpose of NEGC which is to deliver the three ‘garden communities’ in the Section 1 Plan.

Has legal or other advice been sought about the likely impact of a parallel process of consultation on the examination of the Local Plan? We refer you to the West of England Joint Spatial Plan letter from Inspectors, paragraph 45, which addresses this very point.

4. **Planning Inspector.** A reasonable observer can only conclude that this premature attempt to engage equates to pre-determination, and we seek to understand how the Inspector will be able to examine the plan under such conditions. It is plainly unreasonable to put the Inspector under pressure by commencing with this consultation at this time when an independent assessment as to whether the Part 1 plans should proceed with Garden Communities is yet to be concluded.

What is the Planning Inspector's position on the proposal by NEGC Ltd to engage with the public prior to Examination, or indeed, prior to final Inspector's report, on the NEA's preferred options, which may or may not be found sound?

5. **State Aid.** Carrying out a tax-payer funded engagement programme *may* place NEGC Ltd in an advantageous position at examination versus other parties with their own delivery proposals.

Has legal or other advice been sought about the State Aid position?

6. **Scope.** We seek to understand the scope of the proposed engagement, who is invited to participate, what outcome is proposed, whether appropriate lead in times have been provided to those invited to the various consultation events, and whether a consistent approach has been taken to inviting different parties to different events.

You are of course aware, that a number of residents' groups urged NEGC Ltd in September to delay its proposed engagement programme until after examination and after an Inspector's report. Ignoring this request does not bode well for one of the key tenants of garden communities: community engagement, something which must be a two-way process.

CAUSE has received messages, phone calls and emails from people on this issue. Residents are confused, concerned and angry with the current behaviour of NEGC Ltd.

Kind regards

Yours sincerely

MICHAEL ROBSON BA (Hons) DipTP MRTPI



Managing Director

cc.

The Salings Parish Council

Shalford Parish Council

Radwinter Parish Council

Helions Bumpstead Parish Council

Great Bardfield Parish Council

Felsted Parish Council

Wivenhoe Town Council

Marks Tey Parish Council

Coggeshall Parish Council

Bradwell Parish Council

Stisted Parish Council

Copford Parish Council

Councillor Mark Goacher

SERCLE

Hands Off Wivenhoe

CPRE Essex

Colne Stour Association



Colchester Borough Council
Rowan House, 33 Sheepen Road,
Colchester, CO3 3WG

EXD/065

Mr Michael Robson
Managing Director
Cerde Planning
Vesey House
5-7 High Street
Sutton Coldfield
B72 1XH

Contact Adrian Pritchard
Phone
Email
Your ref
Our ref AP/IV/yt
Date 24 October 2019

Dear Mr Robson

Re: North Essex Garden Communities Limited Engagement Exercise

I write further to your letter dated 18 October 2019.

The North Essex Authorities (**NEAs**) and NEGC Ltd have separate and distinct roles. The NEAs are the local planning authorities with statutory plan-making powers; NEGC Ltd, on the other hand, is a separate limited company, albeit wholly owned by the Local Authorities and potential delivery body for the garden communities. The engagement work referred to in your letter is being undertaken by NEGC Ltd as a potential deliverer of the garden communities and is not part of any Local Plan consultation process.

As you will be aware, the NEAs' garden community proposals will be subject to further examination in public. Only once (and if) the proposals are found sound by the Inspector would they be adopted by the NEAs. The engagement work being undertaken by NEGC Ltd cannot and does not pre-determine the outcome of the Inspector's examination into the Section 1 Local Plan.

This letter responds to the numbered points raised in your letter.

1. Adoption of closed mind conclusion

Cerde's letter states that the launch of NEGC Ltd's engagement programme indicates "*that decisions have already been made and that the summer 2019 technical consultation was a meaningless exercise*". The NEAs' preferred spatial strategy involves garden communities and that is the spatial strategy set out in the draft Section 1 Local Plan. It is that spatial

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strategy, together with the further evidence base material, which will be considered by the Inspector at the further examination hearings.

It is for the Inspector to assess whether the Section 1 Local Plan is sound. That is an independent scrutiny exercise. If, for whatever reason, Section 1 is not found to be sound then it would be necessary for the NEAs to revisit the spatial strategy options. However, that would need to be a decision made at the relevant point in time in light of the Inspector's findings.

The NEAs understand that the NEGC Ltd engagement exercise is intended to inform the evolution of the garden community *if* those are found sound. It does not indicate a closed mind on the part of the NEAs, and nor does it undermine the independent assessment of the Local Plan which will be carried out by the Inspector.

2 Conscientious consideration of consultation responses

The responses to the technical consultation on the further evidence base material, including the Additional Sustainability Appraisal, have been provided to the Inspector, and will be considered at the further examination hearings. The consultation responses, the inputs into them and the findings of the Inspector as to soundness, will inform the NEA's decision whether or not to proceed to adopt the Section 1 Local Plan. There is, and will continue to be, a "conscientious consideration" of those consultation responses.

Your letter also refers to the Issues and Options DPD consultation undertaken in 2018. That consultation related specifically to the DPD, which is separate to the Section 1 Local Plan. Those consultation responses will inform the further DPD work. The NEAs intend to report the findings of that consultation back to the relevant committees at the appropriate time. No legal or procedural issues arise.

3 Parallel Processes

As explained above, the NEAs and the NEGC Ltd are two separate entities with different purposes. The NEAs, as local planning authorities, are progressing the Section 1 Local Plan.

The NEAs understand that the purpose of the NEGC engagement exercise is to seek public views to inform the shape of future development of the garden communities if they are found sound. That is a role commonly undertaken by site promoters. It is also common for site promoters to continue such exercises whilst the Local Plan progresses.

If the Section 1 Local Plan is found sound the NEAs would decide how to take forward the Garden Communities and in that context then take forward engagement work through subsequent formal consultation exercises. It would progress that work in its role as the local planning authority.

Given that the subject of the NEGC Ltd engagement is consistent with the preferred spatial strategy of the NEAs and we do not consider there to be any confusion. There are no legal or procedural implications of the two processes progressing in parallel.

4 Planning Inspector

As you note, the Inspector is undertaking an independent assessment of the soundness of the Section 1 Local Plan. The NEGC Ltd engagement exercise does not in any way compromise the independence of the Inspector's assessment. The timing of the further examination hearings and the reporting of the Inspector is ultimately a matter for him, not the NEAs.

The carrying out by NEGC Ltd of engagement at this time cannot pre-determine the Inspector's findings. The Inspector is open to make whatever determination he is minded to and the current engagement exercise may be superseded in light of that determination. That does not, however, prevent NEGC Ltd progressing their engagement work at this time.

5 State Aid

Our legal advice is that the proposed process of public engagement does not constitute State Aid.

6 Scope of the engagement exercise

The scope of the NEGC Ltd engagement is a matter best raised with them. Your request for this information has been forwarded on to NEGC Ltd and I will ask them to respond to you directly on that point.

Yours sincerely

Adrian Pritchard
Chief Executive

cc Andy Wright, Braintree District Council
Ian Davidson, Tendring District Council
Gavin Jones, Essex County Council

1st November 2019

The Rt Hon James Cleverly MP
House of Commons
London SW1A 0AA

Dear James

We have seen a copy of the email that was sent to you from Cause on 21 October 2019 which included a link to a letter from Cerda (Cause's planning consultant) and we understand that the letter from Cerda was also sent to the Chief Executives of the Councils and the Planning Inspector.

In the response to the Cerda letter sent by Adrian Pritchard who is the Chief Executive of Colchester Borough Council, Adrian references that NEGC Ltd will provide further information about the public engagement programme that it is undertaking. We understand that letter has also been forwarded to the Planning Inspector.

We are therefore writing this letter to provide further information about the public engagement programme that NEGC Ltd is undertaking and also to set out NEGC Ltd's position on the matters that specifically relate to NEGC Ltd that were raised in the Cerda letter. In addition to sending this response to you, we are also copying this letter to Cerda, Cause, the Chief Executives of the Councils and to the Planning Inspector.

The Cerda letter asks questions that relate to the Local Plan process. We should emphasise at the outset that there is a clear separation between the work of the North Essex Authorities as local planning authorities and NEGC Ltd who are a potential delivery body for the three garden communities. The public engagement work (or indeed other work) of the NEGC Ltd does not and cannot prejudice or constrain the outcome of the Local Plan process. We should also note, since they have raised a series of legal points, that their letter and the responses to it including this one, have been reviewed by Dentons on behalf of NEGC Ltd. One of Dentons' roles is to provide advice that ensures that there continues to be a proper separation of the work of the NEA and the activities of NEGC Ltd.

We would be happy to further discuss these matters with you should you wish to. In the meantime, we hope that you feel able to participate in the continuing NEGC Ltd programme of engagement.

1. Adoption of a closed mind conclusion.

What reassurances can you give the public that participation in the NEGC Ltd engagement programme could bring about a change in direction, for example a shift towards Inspector's Option 1, the removal of one or more of the 'garden communities' or a reduction in their size?



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The Local Plan Inspector will be re-opening the inquiry to review the updated evidence base, the updated Sustainability Appraisal material and the Section 1s of the Local Plans. That will be part of the continuing independent review of the North Essex Authorities Local Plans. It may find that the present Section 1 approach is sound; it may suggest alternative approaches.

The NEGC Ltd engagement programme assumes that the draft Local Plan strategy is found to be sound. It provides an opportunity to express views about and an opportunity to shape how the garden communities might be developed if the Local Plan strategy is found sound. Accordingly, it will not be considering options for no garden communities or a different number of garden communities. It will assume that the size of settlements are within the ranges suggested in the draft Local Plans.

Consequently, the NEGC Ltd engagement process does not and cannot indicate a "closed mind" on the part of the NEAs.

2. Conscientious consideration of consultation responses.

Has legal or other advice been sought about the legality and legitimacy of NEGC Ltd taking further steps to promote the NEA proposals, before the Inspector has had the opportunity to review consultation responses?

NEGC Ltd has obtained legal advice that confirms that there is no legal bar on conducting sequence 1 of the public engagement programme ahead of the re-opened examination in public. It is recognised that NEGC Ltd is carrying out this engagement programme ahead of the conclusion of the Local Plan examination process and that some of this work may be superseded by the Inspector's conclusions.

As you will appreciate, NEGC Ltd is acting in line with other promoters of potential sites that are included in emerging Local Plans by undertaking engagement activity. NEGC Ltd seeks local stakeholder and public views and opinions so that they can help shape the future development, in this case the three potential Garden Community developments in North Essex. As the press release states, the information obtained from sequence 1 will be used to inform the production of layout options for each site that will then be the focus of our sequence 2 activity in 2020. In fact, we are making it clear in our communication that this is an engagement programme and are not specifically referring to it as a consultation which statutory bodies such as local planning authorities must undertake.

For the avoidance of doubt, the sequence 2 engagement will only follow if the Local Plan strategy is found sound at the end of the forthcoming examination in public. However, the activity relating to sequence 1 will enable NEGC Ltd to proceed quickly with the detailed work required to be progressed if the Local Plan strategy is found to be sound in the knowledge that more detailed work will be prepared with input from stakeholders and the public. Sequence 2 will take place in a manner that is co-ordinated with the NEA work on the development plan documents.



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NEGC Ltd will give "conscientious consideration" to the engagement responses and is committed to ensuring a continued dialogue with local stakeholders between the sequences outlined above. We assume that the NEAs will continue to be conscientious in their consideration of the Local Plan.

3. Parallel processes. The public is confused.

Has legal or other advice been sought about the likely impact of a parallel process of consultation on the examination of the Local Plan? We refer you to the West of England Joint Spatial Plan letter from Inspectors, paragraph 45, which addresses this very point.

Please refer to the answer to point 2 above. As noted above the consultation process on the Local Plan evidence base and Sustainability appraisal, and the NEGC Ltd public engagement process, are clearly different in scope, role and outcomes. We do not believe that there is any confusion.

4. Planning Inspector.

What is the Planning Inspector's position on the proposal by NEGC Ltd to engage with the public prior to Examination, or indeed, prior to final Inspector's report, on the NEA's preferred options, which may or may not be found sound?

That is a matter best addressed to the Planning Inspector.

5. State Aid.

Has legal or other advice been sought about the State Aid position?

Our legal advice is that the proposed process of public engagement does not constitute State aid.

6. Scope.

We seek to understand the scope of the proposed engagement, who is invited to participate, what outcome is proposed, whether appropriate lead in times have been provided to those invited to the various consultation events, and whether a consistent approach has been taken to inviting different parties to different events.

We have been asked by Adrian Pritchard, Chief Executive of Colchester Borough Council, to provide details to you of the proposed engagement programme. Our sequence 1 public engagement programme comprises a series of Local Stakeholder and Public Exhibition events for each Garden Community together with a final Public meeting as follows:

Tendring Colchester Borders

- Local Stakeholder Workshop at Wivenhoe
- Public Exhibition at Greenstead

Thursday 24 October 2019

Saturday 26 October 2019



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Colchester Braintree Borders

- Local Stakeholder Workshop at Marks Tey
- Public Exhibition at Marks Tey

Thursday 07 November 2019
Saturday 09 November 2019

West of Braintree

- Local Stakeholder Workshop at Braintree
- Public Exhibition at Great Saling

Thursday 21 November 2019
Saturday 23 November 2019

In addition to the above events, there will be specific workshops and briefings for Councillors and we are also planning on holding a final Public meeting on Monday 25 November 2019 at Colchester Institute to exhibit the information we have obtained from the events listed above.

The purpose of the Workshops is for local stakeholders to review and provide their thoughts on a range of information provided by experts relating to the following themes of future lifestyles:

- Living & Wellbeing
- Working & Learning
- Culture & Leisure
- Connections & Transport

This information is then displayed alongside the comments and thoughts from the local stakeholders at the public exhibitions a day or so later so that the public then have the ability to provide their comments and thoughts.

In addition to the above, NEGC Ltd has also commissioned an independent stakeholder research company called “thinkingplace” to undertake interviews with local stakeholders to ascertain their views about the place they currently live in. The output from these interviews will be collated and combined with the information received from the Workshops and Exhibitions to provide a basis for NEGC Ltd to begin to plan for sequence 2 of its public engagement programme as explained in the answer to question 2 above.

We have listed below the range of different categories of local stakeholders:

- Business
- Health
- Education
- Transport
- Environment and Conservation groups
- Faith groups
- Charities
- Local community groups
- Local resident groups
- Utilities
- Emergency services



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For information, Hands off Wivenhoe, Cause and Sercle have been invited to a relevant Local Stakeholder Workshop.

Finally, we refer to their contention that, a number of residents' groups have urged NEGC Ltd to delay its sequence 1 public engagement and note the reference to community engagement. We are clear at NEGC Ltd that community engagement does not just involve residents' groups and want to ensure that a range of local stakeholder groups as well as the general public are involved in the sequence 1 public engagement programme as set out above.

Yours faithfully

John Spence CBE
Chairman
For and on behalf of North Essex Garden Communities Limited

Richard Bayley
Group Managing Director
For and on behalf of North Essex Garden
Communities Limited



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