Delivery Mechanisms and State AID

CAUSE response to NEA hearing statement 16 December

Question 1:

Developer appraisals: the NEAs suggest (on page 3) that "there are private sector developers interested in each of the garden communities, each of whom believes that the proposals are viable and deliverable."

We only have private sector developer appraisals for two out of the three GC sites and these show much reduced and delayed infrastructure contributions[1] which cannot possibly meet the requirements of the Plan. Their submissions should be seen as a starting point for future s106 negotiations after the land is allocated. If they are to be relied upon as evidence of deliverability full details need to be disclosed and tested properly against the Plan's policies.

We have analysed the Avison Young appraisal but not yet had time to examine the Savills, Gerald Eve and GL Hearn ones in detail. We will do this before the EIP.

Question 3: Compulsory purchase

Contrary evidence: on page 5 the NEAs say that there is "no contrary evidence" to their assertion[2] that the land would be valued at "close to the existing use value with a margin in appropriate circumstances to reflect any existing hope value or development prospects". We are not told what the hope value or margin might be, a critical issue.

We cite the Welborne planning permission granted in autumn 2019 as contrary evidence. Fareham Council adopted the Welborne plan in 2015 and threatened CPO in 2016[3] while the landowner was promoting its own housing scheme and did not wish to sell. Only in 2019 was agreement reached at £100,000 per acre following advice from CBRE based on its knowledge of strategic sites nationally. The commercial balance of power will be similar in North Essex and it is reasonable to assume that it will produce a similar outcome.

[1] We have no appraisals at all for TCB where Mersea Homes are clearly challenging the 30% social housing minimum and cannot be said to support the NEA view that the policy requirements are deliverable.

[2] This key claim is made in para 12 of EB/084

[3] See BBC News 12 February 2016 "Landowner anger at Welborne compulsory purchase plan".

Valuation advice: on page 6 the NEAs state that the Property Costs Estimates will not be made publicly available because it will prejudice negotiations. This creates a major gap in the evidence supporting the plan, a flaw that goes to the root of the chosen strategy. If PCEs cannot be published reliance can only be placed on the Welborne precedent which leads to the original benchmark of £100,000 per acre.

No reliance can be placed on self-interested statements from parties (ie the NEAs and NEGC) to a commercial negotiation in which they have a massive vested interest.

Question 4: the CAUSE critique of the NEA's Land Acquisition strategy

NEGC's Matter 5 hearing statement lays out (for the first time) a land acquisition strategy, but it doesn't tie in with their financial appraisal. They state that the land will be acquired over 12 years but the CBB model shows that it is acquired over 18 years, thus improving financial returns.

We still have no answers to the four points below.

1. No scheme hope value: the NEAs define no scheme hope value only in relation to a GC scheme (page 9). They do not recognise that bigger uplifts will be available from the smaller and more efficient[4] schemes which would come forward if the GC plan was cancelled. It is these higher uplifts that will have to be paid in a no scheme world, especially if the land is to be bought in small parcels.

   No scheme hope value will not immediately be diminished by the Plan policies - it is just one local plan in one area, and landowners will take a longer view.

2. Contested CPO: we have no substantive response on contested CPO other than a statement on page 10 that the NEAs would have to rely on professional advice. This will not solve the problem: they will have to face market realities and finance providers will not want to bear litigation risk.

   They also state that the compensation might be paid after the land has been taken. This ignores the landowner's right to request an advance payment of 90% when the land is taken, something that would be difficult to finance. The contested balance would be determined later by the Lands Tribunal.

[4] More efficient because more surplus available for infrastructure. See CAUSE's Small is Beautiful papers.

3. Deferred CPO: The NEAs have yet to explain how CPO would work for the later tranches of land acquired. We draw attention to s32[5] of the Neighbourhood Planning Act which requires the valuer to assume that the scheme is cancelled at the date of the CPO. This requirement will lead to sky-high "no scheme" valuations for small parcels of land purchased on the edge of part complete GCs. Even with the shorter deferral periods proposed by Avison Young it will be difficult to avoid escalating compensation payments and uncertainty.
4. Blight: the NEAs have yet to explain how the issue of blight will be dealt with as raised in paragraph 45 of CAUSE's legal opinion[6]. More specifically significant sums need to be set aside for the acquisition of properties blighted by the prospect of deferred CPO including houses, farm-land and businesses. It is not just the quantum of money required but the timing – the threat of deferred CPO will cast a shadow over hundreds of property holdings, and many that are unsaleable could be immediately "put" on NEGC at "no scheme" valuations. It is unclear how funding for such purchases would be found.

Question 7 – State aid

No state aid risk in a Local Plan: the NEAs assert (on pages 1 and 13) that there can be no state aid risk from a local plan in itself, and (in para 5.7.12) that state aid problems can be addressed later when the method of delivery is decided. However the NPPF requires a plan to be deliverable, and something that blocks that must be addressed now. The NEAs have yet to identify even one pathway through all the market and regulatory obstacles including state aid.

No state aid risk in the HIF funding: it is for the NEAs to deal with state aid problems arising from the HIF funding, not MHCLG, as is made clear in the MHCLG guidance. It is not good enough for the NEAs to suggest (on page 14) that an objector should take legal action. Or for NEGC to suggest that the relevant government department is responsible.[7] It is their risk, and a real one which they ignore at their peril.

The suggestion that there is a market failure over the funding of the A120/133 link road to justify state aid doesn't bear scrutiny. The provision of roads is a government activity in the UK, not a market one. There is no market failure in the housing market which is the one being distorted.

We agree that the road is not simply an access road to development land. It is the artificial linkage to TCB that distorts the housing market and produces a spurious and potentially illegal[8] "material consideration" for a planning decision.

[5] Rule 1 for the application of the no scheme principle in s32 of the Neighbourhood planning act 2017.
[6] See para 45 of chapter 18 of our consultation response
[7] NEGC answer to Matter 5 Question 7
[8] We are referring to the recent Forest of Dean judgement on material consideration.

PWC report: on page 15 the NEAs argue that the PWC report[9] should be ignored because it is out of date and they have never agreed with it all anyway. They wrongly suggest that PWC considered only one particular delivery model - it analyses the problems of several alternative structures and is still as relevant today as when it was written.

Independent legal advice: they assert (on page 15) that they are relying on independent legal advice. We question whether Denton's advice is now independent given their involvement in creating the plan, and whether it is the right advice to rely on. State aid and its impact on the cost of capital is a subject which requires financial as much as legal input.

Question 8: cost of capital

We have two general points on the cost of capital. Our Matter 7 hearing statement (Q5) addresses some more specific points raised by NEGC.

Finance costs: the NEA response pays insufficient attention to the cost of capital. It is no good relying on the 6-7% used in housebuilder appraisals and s106 negotiations. The GC plan has no precedent in scale or ambition and evidence that the money can actually be raised is needed.

We suggest a separate WACC[10] study addressing the rate at which money can be raised from market sources. This is needed whether the project is financed from private sources, or public ones on MEOP principles. The evidence available to date supports a WACC of 10% or more.

Security for 100% debt financing: it is no good relying just on the land acquired as security (see page 17). A bank will look at the downside if the project doesn't go ahead, ie. resale at agricultural value. Any premium over agricultural value will need to be financed from equity – or debt with a very high interest rate.

The NEAs suggest that extra security can be provided from marriage value. Presumably they think that aggregating small holdings into bigger ones will add value. But our "Small is Beautiful" work demonstrates the opposite ie. the NEAs will buy small plots at high prices and aggregate them into larger ones worth less. The conclusions from the Troy Three Dragons report, which provides market evidence for lower per acre values for big holdings than small, also indicate that marriage value is negative.

[9] The 2016 PWC report was referred to by the NEAs in the 2018 EIP and a copy was requested by the Inspector. The NEAs have refused to release the full version but even the heavily redacted one is highly damaging to the Plan because it highlights the financial risks and high cost of capital.

[10] Weighted Average Cost of Capital