

**Wednesday 15 January  
2020**

**Afternoon session**

**2.00pm – 5.30pm**

## **Matter 5**

### **Delivery mechanisms and State aid**

#### **AGENDA**

*The numbered questions in italics below are the original questions from the Inspector's matters, issues and questions document [IED/020]. For any original question that is not shown below, the Inspector has sufficient information from the hearing statements and responses, and is not inviting further discussion on it.*

*The commentary in normal typeface is from the Inspector.*

*The lettered questions in **bold typeface** are the further questions on which the Inspector will be inviting discussion at the hearing session. He is not inviting written responses to these questions.*

3. *What is the evidence which supports the statements about the value of land acquired under compulsory purchase powers in:*
- (a) *paragraphs 12-15 of the NEAs' Position Statement on Delivery Mechanisms [EB/084]?*
  - (b) *paragraphs 17, 18 & 43 of the Viability Evidence by Avison Young submitted with the comments of NEGC Ltd on the June 2019 Hyas Viability Assessment Update [EB/086]?*

With their hearing statement, NEGC Ltd provided a Briefing Note from Avison Young giving a summary of the approach they took to preparing an acquisition cost budget for the proposed GCs. Paragraph 43 of the Viability Evidence by Avison Young submitted with the comments of NEGC Ltd on EB/086 says "Our specialist Compulsory Purchase team has estimated the costs of acquiring the necessary land and buildings applying an approach under Rule 2, section 5 of the Land Compensation Act 1961". Sections 5 & 6A of the Land Compensation Act 1961 are also referenced in the NEAs' hearing statement. EXD/073 is a summary of the advice provided to NEGC Ltd on the use of CPO powers.

**A. Does this further information demonstrate that the NEAs' and NEGC Ltd's statements on the value of land acquired through CPO are sound?**

4. *Would the NEAs and NEGC Ltd please respond to each of the points on the use of compulsory purchase powers made in CAUSE's Land*

*Acquisition Strategy paper, submitted with CAUSE's comments on EB/084?*

6. (a) *Would the existence of a viable alternative master developer with control over land allocated for a garden community restrict the ability of the Secretary of State to confirm a CPO on that land (see paragraphs 8.10-8.11 of the consultation response to EB/084 from Carter Jonas on behalf of L&Q, Cirrus Land Ltd and Gateway 120)?*

(b) *If so, what are the implications for delivery of the garden communities in accordance with the NEAs' policy aspirations?*

Paragraph 4.2 of the Avison Young Briefing Note indicates that two separate CPOs will be used to acquire the land for the proposed West of Braintree and Tendring Colchester Borders GCs within the first six years of the projects. At Colchester Braintree Borders GC the proposal is to use four separate CPOs to acquire the land within the first 12 years. CAUSE say that this strategy is not consistent with the Avison Young viability appraisal of Colchester Braintree Borders GC, in which land payments are staged over 18 years [EXD/062(2/5)].

**B. Would this approach to land acquisition be effective?**

8. *What is the NEAs' and NEGC Ltd's response to Mr O'Connell's view that a real interest rate of 8%-12% would necessarily apply to debt incurred by the garden community development vehicles in the first 10 to 20 years of the garden community projects (pp8-10 of his paper)?*

NEGC Ltd say they are confident that finance rates of 6% or less can be achieved for public/private partnerships with and without the use of CPOs. With their response they provide a short paper from Mr Gareth Blacker of Homes England citing his experience of infrastructure loans provided by his organisation.

Mr O'Connell maintains his view that a 6% finance rate is not a sound assumption given the particular circumstances of the GC proposals.

**C. Does the available evidence support NEGC's position on this point?**

5. (a) *If the Section 1 Plan is neutral as regards who will be responsible for leading delivery of the proposed garden communities, how will the NEAs be able to ensure through their development management powers that any garden community proposal that comes forward meets all their policy aspirations for the garden communities?*

(b) *In this regard, do any further amendments need to be made to policy SP7 paragraph 3 (beginning "The Councils will need to be confident ...") and/or to policy SP7 criterion (ii)?*

The third and fourth paragraphs of policy SP7 read:

"The Councils will need to be confident, before any consent is granted, that the following requirements have been secured either in the form of appropriate public ownership, planning agreements and obligations and, if necessary a local infrastructure tariff.

"The design, development and phased delivery of each new GC will conform with the following principles: ..."

There then follows a list of 14 principles.

L&Q, Cirrus Land Ltd & Gateway 120 suggest that the third paragraph of SP7 is replaced by:

"In granting any consent, the following requirements would have been met."

CAUSE comment that "every promise made during the public consultations must be hard wired into the plan with specific reference to the GC principles and up-front infrastructure".

The NEAs say that they "are considering the scope to use to use a Local Development Order to consent development once the DPD is in place. If an LLNTDC is the delivery vehicle then an LDO would be likely to be used. An LDO would allow the NEAs or LLNTDC to change requirements to meet changing standards".

**D. What amendments (if any) are needed to the third and fourth paragraphs of policy SP7 in order to ensure that the development of each GC will conform with the principles that follow, whichever model of delivery is used?**

**E. Are there any significant shortcomings in, or omissions from, the list of principles in policy SP7?**

**F. Would the possibility that requirements could be altered in a future LDO affect the deliverability of the proposed GCs?**

*(c) Should the Section 1 Plan instead specify that delivery of the proposed garden communities should be led by a public-sector local delivery vehicle, a Locally Led New Town Development Corporation, or a private-sector developer?*

The NEAs' view is that the Plan should be neutral as regards delivery model.

NEGC Ltd suggest an amendment to policy SP7 "to encourage public / private partnership approaches including explicit reference to the possible use of an LLNTC to deliver the North Essex Garden Communities. This would reflect the significant advances in legislation, regulations and guidance since the initial Examination process. This would enable sharing of risk and reward as well as ensuring that the costs of local and social infrastructure including affordable housing are appropriately borne by landowners and those promoting the Garden Communities."

Galliard suggest amendments to policy SP7 in order for it to be expressed "in more neutral language while still allowing many of the NEAs' aspirations to be achievable". L&Q, Cirrus Land Ltd & Gateway 120 wish to see the opening clause (as far as the colon in line 5) of policy SP7, principle (ii) deleted.

**G. Are any of the suggested changes to policy SP7 necessary to achieve an appropriate delivery mechanism for the proposed GCs?**

**H. Would NEGC's proposed amendment to SP7 conflict with the legal principle that revenue or profit may not be appropriated by a public-sector body without explicit Parliamentary sanction<sup>1</sup>?**

1. *A number of participants argue that delivery of the proposed garden communities could be more effective if it were led by private-sector developers than by a public-sector body. Please [would the NEAs & NEGC Ltd] respond to these arguments.*

To varying degrees some of those promoting the GCs distance themselves from the NEGC's statement that "a public sector-led delivery vehicle potentially working in partnership with the private sector is the best way in which to provide confidence that the Local Plan policy aspirations will be delivered over time and to the right standards".

In their response NEGC Ltd say their concern is that "no individual landowner or organisation has control over all the land required for development and/or infrastructure requirements of a single, comprehensively-planned GC", and that "an appropriate master developer partner [...], together with the public sector-led Locally Led Development Corporation, [c]ould take a 50/50 role in the delivery of the garden communities".

**I. Would the apparent differences over the lead delivery role between the views of NEGC Ltd and promoters of the proposed GCs pose a risk to the deliverability of the GCs?**

**J. Are there any other points, not already covered, which need to be discussed at this hearing session?**

---

<sup>1</sup> See, for example, *Attorney-General v Wilts United Dairies Ltd* [1921] 37 TLR 884 [EXD/021A], and *Congreve v Home Secretary* [1977] 2 WLR 291 [EXD/021B]