

# PLANNING NOTE

One Chapel Place  
London  
W1G 0BG  
T: 020 7518 3200  
F: 020 7408 9238

---

**From:** Carter Jonas and Mr Charles Banner QC on behalf of L&Q, Cirrus, and G120

---

**To:** Roger Clews, Inspector

---

**Project:** North Essex Section 1 Local Plan Examination

---

**Date:** 21 February 2020

## RESPONSE TO EB/091B NEA SUGGESTED AMENDMENTS

1. We provide this note on behalf of L&Q, Cirrus, and G120 to respond to the NEA's suggested amendments within document EB/091B, specifically Modification 58 in relation to Policy SP5. This note has been prepared in following the advice of Leading Counsel, Charles Banner QC, who has participated throughout the reopened Examination into the Section 1 Local Plans.
2. Over the course of the Examination, a number of amendments have been proposed by the North Essex Authorities (NEAs), L&Q, Cirrus and G120, as well as other stakeholders. For ease, appended to this note is a table of proposed wording from each of:
  - the originally submitted Plan;
  - the NEA's amendments; and
  - that proposed by L&Q, Cirrus, and G120 in representations to the July 2019 technical consultation.
3. In deciding what modifications to recommend to the Council, an Inspector will need to be content that these modifications are *necessary* to make the Local Plan sound. The amendments in EB/091B were put forward by the NEAs in an attempt to capture elements of the discussion at the EiP. They do not reflect the general discussion and do not affect the primacy of the Plan as submitted, which is considered by the NEAs to be sound. The amendments to policy wording have no status in the Plan and any proposed modifications must follow the direction of the Inspector.
4. The root of the various wording amendments relates to the need, or otherwise, to provide triggers linking delivery of the garden communities to that of strategic infrastructure. There is broad agreement between participants that the delivery of upgrades to the A12 and A120 are necessary to deliver 24,000 dwellings at the Colchester Braintree Borders Garden Community (CBBGC). However, as we have evidenced<sup>1</sup>, there is clear potential to allow for initial phasing to be delivered prior to (but more likely alongside) that of the strategic road upgrades, facilitated by more localised road interventions.

1. \_\_\_\_\_

<sup>1</sup> See representations to EB/091, including supporting highways evidence.

5. The question becomes whether in the short-medium term (i.e. the Plan period), there is sufficient confidence that the development quantum proposed within policy<sup>2</sup> can be delivered, and that in the long term, further development up to the proposed maximum development size is capable of being delivered after this.
6. EB/091A proposed wording that sought “*funding and route commitments [for the A12 and A120 upgrades] secured in advance of the start of the Garden Communities*”. This is notionally a logical approach in seeking to see a pathway to the delivery of essential infrastructure necessary for the latter stages of CBBGC, but allowing the process of approval in principle – appreciating the lead-in times to commencement of the garden community – to begin.
7. What this lacked was a specific recognition that delivery can commence prior to delivery of the strategic road upgrades. The triggers proposed within our earlier representations would specifically allow for the delivery of CBBGC to be intrinsically linked to essential infrastructure, reflecting what is *necessary* to be included in policy. In doing this, we reiterate the statements of MHCLG’s Garden Community Prospectus and the Kerslake Report in stating that a key interest of Government in promoting garden communities is their ability to offer “*early delivery and [at] a significant acceleration of housing delivery*”. It cannot logically have been the case that the NEAs wished to see no delivery from CBBGC until the full roads were in place.
8. The Examination has not heard any evidence contrary of that provided by L&Q, Cirrus, and G120 that initial delivery can be facilitated by solely local road interventions. Were there any delay or cancelation of the strategic road upgrades<sup>3</sup>, then under our proposed triggering, CBBGC would be capped at 2,500 dwellings.
9. Even at 2,500 dwellings, sufficient infrastructure can be delivered to ensure that the principles sought within policy are met, albeit at a smaller scale. A 2,500 dwelling scheme at CBBGC has already been tested within the Additional Sustainability Appraisal (ALTGC04b and NEGC2a), with the conclusion of that report being that there was no material difference between the performance of a spatial strategy incorporating this site, as with that of the preferred spatial strategy, or any alternative strategy tested. The acceptability of development at this scale is not uncommon, with garden villages forming 32 of the 48 sites identified within the MHCLG garden towns and villages programme.
10. This trigger would be acting as a fallback, securing the delivery of much needed development within Plan period, without risking unacceptable harm resulting from a universal approval of a larger scale garden community without the commitment to essential infrastructure. It also allows scope for CBBGC to contribute land and finance to the delivery of this infrastructure in a coordinated approach. This does not preclude the remaining development, contingent on this road infrastructure, not to be viewed as capable of being delivered. The A12 has funding and route commitments, whilst the A120 has been shown to have unanimous political support at a local and national level<sup>4</sup>.
11. The evidence provided by L&Q, Cirrus, and G120 has shown a deliverable garden community of approximately 17,000 dwellings without the need for a successful HIF bid. This aligns with the bracket of development quantum within policies SP7 and SP9. With a successful HIF bid, which is shown to be a matter of when, not if, the NEAs and NEGC Ltd have evidenced the potential for a deliverable garden community of around 21,000 dwellings, also according with policy.
12. Conversely, the wording within EB/091B has suggested amendments that impose an apparently blanket ban on planning approvals within the CBBGC Area of Search prior to consent and funding of the A12, route commitment and funding of the A120, and consent and funding of Route 2 of the rapid transit system (RTS). This is despite

1. \_\_\_\_\_

<sup>2</sup> For CBBGC it is 1,350 dwellings, or as we have shown a minimum of 2,500 dwellings by 2033.

<sup>3</sup> Appreciating that the A12 has funding and route commitments that would allow a greater scale of delivery at CBBGC.

<sup>4</sup> See paragraph 2.4 of our Matter 6 Hearing Statement.

providing no evidence that there requires a moratorium on development until such commitment is secured. Indeed, were a moratorium justified for any development quantum within the CBBGC, then it calls into question the deliverability of any development within the Plan area that would impact the A12 or A120.

13. In fact, the proposed wording provides no practical benefit when compared to the wording of EB/091A, but does create an onerous environment that prevents the ability to positively plan the garden communities and facilitate delivery promptly and at pace. The difference between the need for consent and funding prior to planning approval (EB/091B) and funding and commitments prior to start of CBBGC (EB/091A) is an immaterial one, failing to actually link to delivery, as is the case with our proposed triggers. Accordingly, the inclusion of the wording at EB/091B appears unevicenced and unnecessary in making the policy sound.
14. To an even greater extent, the inclusion bullet 2a(iii) in regard to RTS is unnecessary, with the need to directly link it to CBBGC unsupported by any evidence. Whilst L&Q, Cirrus, and G120 remain supportive of RTS in principle, including the potential to link it into CBBGC, RTS remains a regional project, to the benefit of the whole region, rather than one specifically required to deliver CBBGC.
15. CBBGC as proposed will create a comprehensive development of a scale similar to key service centres such as Braintree, Clacton-on-Sea, and to a lesser extent Colchester. The presence of Marks Tey station means it will benefit from greater connectivity to larger conurbations<sup>5</sup> within the County and wider region than many of these key service centres. This connectivity remains the case whether the site is capped at a smaller scale or delivered in its entirety. Any suggestion that RTS is necessary in justifying CBBGC as a sustainable location would undermine decisions to locate new development at towns such as Braintree, Clacton, or smaller settlements such as Witham or Halstead, all of which are accepted sustainable locations for growth.
16. Accordingly, it cannot be justified to prohibit the ability to begin delivery at the site until there are firm commitments for the delivery of Route 2 of the RTS. A simple assessment of this route shows that it achieves the same goal of connecting CBBGC and Colchester as is achieved by the existing Great Eastern Mainline (GEML), with journeys between the two stations being just seven minutes. The highways evidence submitted by L&Q, Cirrus, and G120 to the July 2019 technical consultation demonstrated that measures can be implemented to deliver sustainable transport measures<sup>6</sup> to connect to the GEML from initial phases. This would achieve the same internalised benefits of the RTS, should this not be delivered.
17. L&Q, Cirrus, and G120 do not object to the wording of bullets 1(a) and 1(b) within suggested change (Mod 58) EB/091B. These provide logical guidance to the secondary stage of plan-making within the site specific DPDs. Bullet 1(a) provides the platform to include within the DPD a similar trigger mechanism to that proposed by our July 2019 representations. Bullet 1(b) provides an appropriate mechanism for further exploration of a potential RTS without unnecessarily making it a requisite trigger to a planning approval for CBBGC.
18. A simple solution to the unjustified additions at 2(a) would be to remove it in its entirety. As is stated above, bullet 1(a) provides the platform for securing the appropriate delivery of infrastructure against housing phasing, whilst bullet 1(b) is more appropriately worded to continue to evidence the potential for RTS to be developed across North Essex and to link into the garden communities.
19. Should it be concluded that specific reference is needed at this point to essential strategic infrastructure (i.e. the A12 and A120 upgrades, not RTS), then either the wording proposed by the NEAs within EB/091A, or the suggested wording within our July 2019 representations would be more appropriately installed into policy and would go towards producing a sound Local Plan.

1. \_\_\_\_\_

<sup>5</sup> Norwich, Ipswich, Colchester in the north and Chelmsford, Brentwood, London to the south.

<sup>6</sup> Creating attractive, usable priority routes for pedestrians, cyclists (or similar e.g. e-scooters), and public transport.

20. As a matter of course, it will be necessary to delete the additional suggested change (Mod 91) of Policy SP9 Para D7.