NEA'S SECTION 1 LOCAL PLAN

MATTER 5

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OPINION

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1. This opinion has been prepared in accordance with the Inspector's request for written responses to the NEGCs Note (EXD/073) to be submitted by 31 January 2020. This opinion is part of CAUSE's response to that document. It is also informed by statements made on behalf of the NEA/NEGC during the course of the current examination hearings and, more particularly, at the hearing into Matter 5 on 15 January 2020. It should also be read alongside my previous written opinions of 12 January 2018, 12 April 2018 and 27 September 2019 and the points made therein but it is not intended to be a line-by-line critique of EXD/073.

2. The decision letter dated 10 January 2020 by the joint inspectors conducting the examination into the Uttlesford District Council Local Plan Examination is undoubtedly a material consideration, especially as it concentrates on the Garden Communities proposed for that area. The inspector is clearly correct to state that his examination and determination of these three Section 1 local plans cannot determine matters that stray outside the geographical boundaries of the three local planning authorities. However, there is inevitably a degree of interplay between the Uttlesford District Council Local Plan and these three Section 1 Local Plans given that the West of Braintree GC straddles the boundary between Braintree DC and Uttlesford DC – see paragraph 113 of the inspectors' letter – and a consequent need for a commensurate degree of consistency. I would also draw attention to the observation of the joint inspectors with regard to the Policies Map in paragraphs 16 and 17 of their decision letter.

3. In addition, certain points were made at the hearing session into Matter 5 by representatives of the NEAs that are material to this opinion. First, Mr Ashworth

of Dentons was unable to provide any example of a new town or Garden Community of the overall scale constructed on a green field sites contemplated by the NEAs. The best that was offered was Milton Keynes[1]. However, in that regard I would draw attention to, and repeat, the comments made in paragraphs 37 – 47 of my opinion of 27 September 2019. Second, it was confirmed and constantly repeated during the session that the Section 1 Local Plan was delivery vehicle "blind". I therefore repeat my observations in paragraphs 17, 19 and 46 of that opinion. If no particular local delivery vehicle is to be contemplated at this stage, then it begs the questions what was the purpose in establishing NEGC in the first place and does it have any future role to play or serve any meaningful purpose? Third, Mr Ashworth appeared to accept (as he must) that if the private sector wishes to promote its own developments that meet the objectives of the NEAs for the Garden Communities, it would make it difficult, if not impossible, for the NEAs to compulsorily acquire the land – see also paragraph 144 of the MHCLG Guidance on the Compulsory Purchase process and the Crichel Downs rules ("the CPO Guidance") and also the Initial Response from Galliard Homes in relation to paragraph 17 of EXD/073. Fourth, it would appear from the questions put to Avison Young that the land valuations relied on were based on the values associated with a compulsory purchase of the entirety of the land required for all three Garden Communities. This admission should be read alongside both paragraph 144 of the CPO Guidance and also paragraph 140 of that Guidance which, in my opinion, clearly advocates the purchase of all the necessary land early in the development process. Fifth, it was suggested by Avison Young that it would be possible to defer acquisition of the relevant land through the compulsory purchase process by up to 6 years. Despite the fact that the NEAs were unable to offer any comparable or credible example of a deferred compulsory purchase order for a scheme of this magnitude (and using the relevant statutory powers), the suggestion that there was a 6 year potential deferment by utilising the Notice to Treat route was not completely accurate. Once a compulsory purchase order is confirmed, the acquiring authority has only

[1] An interesting and telling comparison. Milton Keynes was designated by central government as a New Town Corporation in 1967 and in its 25 years existence oversaw the building of 44,000 new homes in a new city. This demonstrates the true scale of the NEA's ambitions and also highlights the necessary legislative background and corporate structure that were utilized in order to bring about its development.

three years to either serve a General Vesting Declaration (thereby obtaining the title to the land) or to serve a Notice to Treat. If the latter is not served within 3 years it ceases to have effect. It is the case that, once served, the acquiring authority has a further 3 years to serve the Notice of Entry and to take possession of the land. However, it remains the case that the acquiring authority has just 3 years from the date of confirmation in which to serve the Notice to Treat and, once served, it cannot be withdrawn save in very limited circumstances. In short, whichever route is chosen the acquiring authority must commit to acquire the land within 3 years of confirmation.

4. With regard to the question of delivery vehicle, I would simply draw attention to the Government technical consultation that has just closed (26 October – 21 December 2019) into Development Corporation Reform. I am not aware of any response from the NEA/NEGC to this consultation.

5. In my opinion EXD/073 contains a number of omissions and qualifications that are material:

   (1) It purports to be "a summary of advice". Put bluntly, it is open to the accusation that it is little more than a cherry-picking exercise and the reader cannot therefore make any judgment as to whether or not it accurately summarises the totality of the advice given. It does not provide information as to how many separate pieces of advice were obtained, from whom the advice was sought and in respect of what issues, whether the advice was in writing or orally, the topics covered, the questions asked and, more significantly, the answers given. As a consequence, EXD/073 is of very limited evidential value;

   (2) It can be seen from the above, that the questions referred to in paragraph 6 of EXD/073 cover only a small number of the legal issues involved (some of which were identified in my earlier opinions) and a number of crucial questions and issues, such as the potential for claims relating to blight and how that might affect viability or the need for the Garden Communities and

how that relates to the requirement on the NEAs to demonstrate a compelling case in the public interest, remain unanswered. Moreover, the broad designation of blurred areas in the Section 1 Local Plan may give rise to further problems with blight should landowners within those blurred areas seek to serve blight or purchase notices as it may be unclear whether or not the affected land in question falls within the designated area. Neither Avison Young at the hearing nor the NEAs in EXD/073 have attempted to address these issues;

(3) Significantly, there is no attempt to demonstrate that it would be feasible for the NEAs to promote and obtain confirmation of a LLNTDC by the Secretary of State or that the use of compulsory purchase powers is a realistic possibility. In the absence of substantive answers to these issues, any discussions with landowners over land acquisition made against the backdrop of a threatened compulsory purchase of their land will be akin to an acquiring authority holding an empty gun to the landowner's head, which in turn could lead to higher rather than lower land values due to the relative strength of the bargaining positions of the parties;

(4) The document identifies a number of pitfalls. For example, the extract from the MHCLG draft document in paragraph 15 is accepted in the following paragraph to be "only the view of the Government rather than a view of the Courts…" Two points follow. First, it is not uncommon for Government policy statements to be subsequently struck down by the courts when in conflict with the underlying statute. Second, it is only draft guidance and could well change. Paragraph 18 clearly recognises risks and paragraph 19 highlights the need to take care when designating areas. It this makes the reliance upon blurred boundaries all the more incomprehensible;

(5) It is stated in paragraph 13 that section 13C of the Land Compensation Act 1961 allows confirmation of a CPO to be made in stages. It seeks to derive support from paragraphs 45 & 46 of the CPO Guidance. However, it is clear from both the wording of section 13C and the Guidance that this comment is

one of hope rather than expectation. The CPO Guidance draws attention to the limited circumstances when this discretionary power might arise. Paragraph 13 of EXD/073 makes no attempt to address any of the legal issues that would be involved; and

(6) The section dealing with Human Rights issues is simplistic and of only general application. However, it is important to note that the NEAs accept in paragraph 29 that the human rights issues correspond with the long-established policy requirement on the acquiring authority to demonstrate a compelling case in the public interest to justify compulsory acquisition.

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30 January 2020