

SCRUTINY PANEL

29 August 2019

Present: -

Councillor Davies (Chairman), Councillor Bentley, Councillor Dundas, Councillor Hogg, Councillor McCarthy, Councillor Whitehead

Substitutions: -

Councillor Willets (for Councillor Hayter), Councillor T. Young (for Councillor Bourne)

Also present: -

Councillor Barber, Councillor Luxford-Vaughan, Councillor J. Maclean, Councillor Scordis, Councillor J. Young

227. Minutes of Previous meeting

RESOLVED that the minutes of the meeting held on 16 July be confirmed as a correct record.

228. Draft Interim Business Plan of North Essex Garden Communities Ltd

Councillor Bentley (by reason of being Essex County Council Cabinet member for Infrastructure) and Councillor T. Young (by reason of being a former director of North Essex Garden Communities (NEGC) Ltd, and by reasons of his spouse's position as Deputy Leader of the Council and as an alternative director of North Essex Garden Communities Ltd.) declared non-pecuniary interests in the following item pursuant to the provisions of Meetings General Procedure Rule 7 (5).

Councillor J. Young (by reason of being an alternate director of North Essex Garden Communities (NEGC) Ltd declared a non-pecuniary interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7 (5).

Mr Tom Foster, Chairman of the Campaign Against Urban Sprawl in Essex, addressed the Panel pursuant to the provisions of Meetings General Procedure Rule 5(1) to raise his view that NEGC Ltd was a publicly-funded organisation with insufficient control being exerted over it.

The Panel was asked whether a public AGM would be held by the Company before 30 September 2019 and requested to have access to the unredacted 2016 PwC report concerning NEGC Ltd and detail on when financial appraisals would be made public. It was further asked when NEGC Ltd expected that the first residential elements of the garden communities would be delivered. The view was stated that this work would require the production of Development Plan Documents (DPDs), that the pursuit of garden communities via NEGC Ltd added complication and would delay delivery of the project and improvement works to the A12.

It was asked what the Council would do, should the Housing Infrastructure Fund (HIF) bid be unsuccessful and whether work would continue on the other two of the three sites chosen for garden communities.

Mr William Sunnucks addressed the Panel pursuant to the provisions of Meetings General Procedure Rule 5(1) and to raise concern about the proposed recommendation that the Council provide a further £350k funding for NEGC Ltd in the 2019-20 financial year, with further, larger funding requests expected for 2020-21 to follow, should securitised external finance not be obtained, to be spent on back office costs. A definition was requested by Mr Sunnocks for the phrase 'securitised external finance', along with details as to who was expected to provide such finance to a company which owned no land as security. Mr Sunnucks asked whether this would be provided by housing developers, who would expect to receive significant work from the project and would cause conflicts of interest for the councils involved. Information was sought as to how deferred compulsory purchasing of land would be carried out and how the orders would be structured and implemented.

Mr Sunnucks asked as to when a full business plan for NEGC Ltd would be produced, as opposed to the interim business plan currently being scrutinised.

Councillor Luxford Vaughan attended and with the consent of the Chairman addressed the Panel to express her concerns regarding openness and transparency of NEGC Ltd, and the risks it represented to the Council, relating to the Council funding provided to it. These concerns included whether the viability testing of options for delivery would be tested sufficiently, and whether the original viability model in the 2016 PwC report would have gone ahead for approval and whether the current model for viability testing would be given to elected members. It was asked how long the process of deciding upon a delivery vehicle would now take and whether the timetable given for future actions in the interim plan was unrealistic, especially the expectation of the Local Plan Inspector's work to conclude in time for consideration in December 2019. An explanation of how the effect of using compulsory purchase orders would be modelled in the viability testing was requested.

Councillor Luxford Vaughan drew attention to government guidance on locally-led new town development corporations (LLNTDCs), stating that such organisations should have independent directors and giving concern that this would mean a loss of control by the oversight authorities involved. It was further raised that a full business plan had yet to be published and that requests for further funding were scheduled before such a plan had been produced. Funding concerns raised also included how state aid would be sourced.

Concern was raised that officers had not been able to provide to the elected member details of the HIF bid and the view was given that this should be available to the public. Access to the Dentons report entitled 'Delivery of the Garden Communities' was also requested.

Questions were raised regarding how the social housing elements of the communities would be overseen, how ownership would be decided between the

local authorities and whether information could be provided regarding the number of social housing units planned. Clarity was also requested regarding the routes of the proposed rapid transit system.

Clarity was requested on whether councillors who were directors of NEGC Ltd had a prejudicial interest when funding decisions relating to the Company were taken by the Council, and whether this should preclude them from voting.

The Scrutiny Panel were asked to ascertain what outcomes came from NEGC Ltd's participation in the MIPIM real estate conference and whether any firm offers, or interest, could be reported on. It was also asked why no private investors had, as yet, been found. Further to this, the claim that Essex University would provide jobs and income for garden community residents was queried. Detail was requested relating to the provision of utilities and sewerage for the proposed community to the East of Colchester.

Councillor Barber attended and with the consent of the Chairman addressed the Panel to outline his views regarding the relationship between the NEGC project and the ongoing work regarding the Emerging Local Plan. The view was given that the unredacted 2016 PwC report should have been available to councillors before the Emerging Local Plan was put forward to the Inspector. Councillor Barber noted his concern that this could have undermined the credibility of the Council within the Local Plan process, that NEGC Ltd planning work had been ongoing at the same time as the work of the Council's Local Plan Committee and that he suspected that documents provided to the Committee had not included all relevant information. The need for councillors to see appropriate information was highlighted as a key part of their effective decision making, including in the future selection of delivery vehicles for NEGC Ltd, and on providing oversight of the Company.

The Panel were asked to assess whether they considered NEGC Ltd as likely to succeed in its aims, in light of little return on investment shown to date. Deals had yet to be done with landowners, and projected finances were dependent on private investment in the future. An explanation was then requested as to what would happen, should Section 1 of the Local Plan not be accepted by the Planning Inspector.

Councillor Jackie Maclean attended and with the consent of the Chairman addressed the Panel to request more detail regarding how funding from the Council had been spent by NEGC Ltd, and on what progress had been made toward meeting the Company's priorities. Meetings had been held to discuss public views on what should be included in the garden communities, but Councillor Maclean informed the Panel that she had seen no information regarding what is planned for them, especially on the issues of infrastructure and healthcare provision, and how the provision of these would be guaranteed.

Before the presentation of the Draft Interim Business Case, the Strategic Director of Policy and Place answered questions from a member of the Panel and regarding the 2016 PwC report, why it was confidential and the agreement which gave PwC rights of confidentiality. It was explained that this report had been produced for the Council, having been commissioned by each of the local authorities involved in the NEGC

project, to look at the likely effects of pursuing the project. Elements of the report had been deemed confidential due to their content produced using PwC's proprietary software. Local authorities had therefore legally not been able to publish the unredacted report. Regarding a question as to the contractual terms which meant that PwC could choose whether elected members had access to the full report, it was explained that the terms for the work done by PwC had been set by Essex County Council, as the County Council had already had a framework agreement with PwC in place.

The Strategic Director of Policy and Place assured the Panel that the Portfolio Holder for Business and Resources had pushed to make this PwC report available to all councillors and clarified that the report did not form part of the Local Plan evidence base. It had been referred to in an early Cabinet report putting forward the principle of the formation of NEGC Ltd and the redacted copy was first made available to elected members, and then to the public, but requests from councillors for the unredacted report had only been made relatively recently. Panel members stressed the view that all elected members of the Council should have full access to any report commissioned by the Council, using public money, should be made available to elected members.

The NEGC Ltd Draft Interim Business Case was presented by Councillor Julie Young, Deputy Leader of the Council, Portfolio Holder for Culture and Performance and Alternate Director of NEGC Ltd, Ian Vipond, Strategic Director of Policy and Place, and Richard Bayley, Group Managing Director of NEGC Ltd.

The Deputy Leader detailed the overall nature of the control held by the local authorities over NEGC Ltd, and the work done by the authorities' section 151 officers and monitoring officers to examine the Company's draft interim business plan before the approval process was commenced by each of the four councils.

Building on past success in bidding for government funding, there was confidence that further funding would be secured. The overall scale of the funding needed was put into perspective, compared to the large-scale size of the NEGC project. Private investment was also to be sought, and ways to recoup Council funds in the future were being sought. The Council was not exposed to significant liabilities if NEGC Ltd was wound up, as all staff excluding the Group Managing Director were seconded rather than employed by the Company.

The Panel were given assurance that the Cabinet were committed to providing as much information as possible to councillors and the public and to improving the communications relating to the NEGC project. Briefings had been provided to Members and information made public, with further details to be provided.

The Group Managing Director introduced the draft interim business plan and addressed questions which had been put forward. It was confirmed that the NEGC Ltd AGM would occur before 30 September and that, whilst the AGM was not a public meeting as it was a meeting for shareholders, there would be two public meetings held by the Company in October 2019.

Work had continued to prepare evidence on viability and deliverability, and this would be included in the information provided to the Inspector of the Emerging Local Plan, and that the Inspector would also be looking for information from councillors and third parties such as Galliard Homes and West Tey Homes. The Inspector would be seeking to conduct a delivery model 'blind assessment', rather than looking at specific delivery vehicles. The Strategic Director of Policy and Place confirmed that the Inspector would not normally assess specific delivery vehicles but would be looking at the confidence held in the likelihood that these would be viable and achieve deliverability of the Local Plan.

Regarding timescales, the Group Managing Director explained that work would need to be carried out with the local authorities to enable production of any Masterplan for the Communities which would inform any DPD (Development Plan Document), . It was the responsibility of the local planning authorities to approve any DPD drafted. Completion of the first housing elements were scheduled for 2023. Issues regarding the A12 improvement works were under the remit of Essex County Council and it was understood that Highways England were soon due to consult on options for this and NEGC Ltd were expecting to contribute to the consultation.

The HIF bid was addressed, confirming that the bid for the Tendring/Colchester Borders community had been announced, with the bid relating to the community between Colchester and Braintree as submitted by Essex County Council still awaited. The scenarios modelled by Hyas Associates Ltd, consultants engaged by Colchester Borough Council, included scenarios with and without inflation, and questions relating to these were for the Council, rather than NEGC Ltd, to answer.

For the years 2020-21 and 2021-22, different types of finance were being explored. A mix of public and private finance was a possibility, should the Inspector of the Local Plan be satisfied with Section one of the Plan, but there were no plans to seek grants from 2020 onwards. The mix was expected to include borrowing with a repayment plan, rather than more local authority grants. This may necessitate the provision of security by the local authority for some loans taken out, but all efforts would be made to minimise this type of financing. It was confirmed that the financing strategy being pursued was not the same as that which had underpinned the 2016 PwC report. The Group Managing Director informed the Panel that the obtaining of securitised external funding would potentially lead to investors wishing to influence the way funding is used, and some potential investors may wish to play a part in elements of the decision making. Such potential investors may or may not be appropriate for the project.

Several Panel members questioned why a full business plan had not been brought forward for approval yet. It was explained that the interim business plan was predicated on the Emerging Local Plan and the expected letter from the Inspector being positive. Should the letter not be positive, provisions were in place to carry out a review of the approach proposed, as finance for years two and three were dependent on a positive response to the Emerging Local Plan. Until this had been received it had been deemed prudent to proceed according to an interim business plan.

It was explained that the compilation of an evidence base for the Emerging Local Plan and was a matter for the Council, rather than for NEGC Ltd. More detailed projections for 2019-20 would lead to greater analysis of expectations for 2020-21. In response to queries regarding government guidance on the use of LLNTDCs, it was clarified that this explained the duties and control of the oversight authorities upon such corporations. The Group Managing Director agreed that there were differences between the Letchworth model and that proposed for the NEGC, but that lessons could be learned from Letchworth regarding stewardship and certain principles were still relevant and could inform the delivery mechanism to be proposed later in 2019.

The Group Managing Director offered to further discuss with Councillor Luxford Vaughan her concerns regarding the draft interim business plan and covering report.

Addressing questions regarding social housing provision, it was the case that Council's viability modelling had assumed a 70 percent / 30 percent split between general and affordable housing, but it was likely that the future viability assessments would then increase the percentage for affordable housing. The split of ownership of any social housing was for the participating local authorities to decide, dependent on the delivery vehicles chosen. The Strategic Director of Policy and Place gave assurance that elected members would receive greater detail on this as the process for choosing the delivery vehicles progresses, and that the ownership of any new-build local authority housing was not dependent on the local authority area in which it was built.

Positive results gained from participating in the MIPIM real estate conference included the selection of the NEGC project to be promoted by the UK Trade Minister during his trade mission to China in September. It was expected that a Chinese trade delegation would then further discuss involvement with the project when they visit the UK in October. An analysis of outcomes from the MIPIM conference had been provided to Councillor David King, Portfolio Holder for Business and Resources.

The Panel were informed that not all of the landowners of the areas chosen for the three projects had development option agreements.

The Panel requested an explanation as to why the draft interim business plan for 2019-20 was only coming to the Cabinet for approval now, six months into the year, and whether sufficient oversight was possible, given that fact. It was also queried what would happen, should Full Council not approve the £350k funding which it was to be asked to approve. On a related note, the timescales given within the interim plan noted 'initial budget conversations' with the Council in October, and a Panel member noted that Council budgets would have been drafted by then, indicating that any budget request would have needed to be submitted before that time. The Council's budget setting process was then described for the Panel, with final budget setting to be decided by Full Council in February 2020. Budget conversations had already started between NEGC Ltd and the local authorities. The funding requests to the local authorities in 2019 were a matter for those authorities, which would each have their own processes for approval of such requests, to be followed in the coming months.

Questions on budgetary performance of the Company during 2019/20 were answered, and assurance was given that, as at the end of July, NEGC Ltd was performing well and was underbudget.

In response to the Panel's request for information on alternative options for delivery, should the Local Plan Inspector not sign off on Section 1 of the Local Plan, shareholders in NEGC Ltd and councillors would need to discuss how to approach contingency planning. The Strategic Director of Policy and Place confirmed this would be a Local Plan question. Should Section 1 of the Plan be found unsound, the district/borough councils would need to assess the content of the Section 2 of their local plans and explore what they could legally do to bring these to examination. A consultation period would be needed to look at what content could be taken forward, and with base evidence gathering having occurred, this would avoid having to re-do that element of preparing the Local Plan.

The Panel asked what the approval processes were in use by the other local authorities to decide whether to approve NEGC Ltd's 2019 funding requests and draft interim business plan. The Panel further asked whether Uttlesford District Council would be expected to contribute funding, should it join the NEGC project. The Panel were informed that the other two district councils had their own approval processes, and likewise Essex County Council had its own approval process, overseen by Councillor David Finch, Council Leader. Conversations had continued with Uttlesford District Council through the change in administration, and it had been made clear that, should they become a participant in the NEGC project, they would need to match the funding provided and funding commitments already made by the existing shareholder local authorities.

In answer to questions regarding land ownership and purchase, the Group Managing Director had continued the engagement process with landowners. No formal offers had been made yet, but guidance had been given as to how NEGC Ltd would work with them, such as within an LLNTDC vehicle partnership. The importance of getting a good, well-timed deal was stressed and the timing of the process for selecting a delivery vehicle was built around the expected timing of the Local Plan Inspector's letter.

Panel members questioned further as to what would happen should the NEGC Ltd Board not agree upon a preferred delivery model, and whether this would prevent the use of Compulsory Purchase Order (CPO) powers. The Panel was given assurance that, although not as quick as the process if carried out by a development corporation, the local authorities' CPO powers could still be used to purchase land. Further details were sought regarding CPOs scheduled for the coming year and as to when this would be provided and how it could be shown that these were necessary. It was verified that all CPOs required approval of the Secretary of State, who would expect to see evidence as to them being necessary. A number of meetings were held to lay out the principles of how to proceed with land purchases and CPOs. The Strategic Director of Policy and Place gave assurance that CPOs were a last resort and would only be used if no alternative was possible. Answering concerns regarding the timing of CPOs to be issued in quarter three of 2020-21, the Group Managing Director explained that preparatory work that was being done now would allow this to go ahead.

Milestones regarding delivery options and outline treasury outline business case had been shown in the interim business plan, with the draft business case due in November, for approval by the NEGC Ltd Board in January 2020. This would then go to the shareholder local authorities for their approval. Delivery vehicle options were under consideration and included a minimal option, which left all development work in the hands of commercial developers, through to the formation of a locally-led development corporation (LLDC) to oversee development. It was confirmed that the Panel could request to scrutinise the draft business case and that it would be looked at as to when this would be possible.

A Panel member asked if contact had been made with the new ministerial team at the Ministry of Housing, Communities and Local Government. The Group Managing Director confirmed that the new ministerial team had been written to and that a meeting was being requested with them. It had been noted that Robert Jenrick MP, Secretary of State, was supportive of LLDCs and that NEGC Ltd continues to meet with senior civil servants in his ministry.

Regarding the submission of evidence to the Inspector of the Emerging Local Plan, a Panel member asked whether the evidence submitted by the local authority and NEGC Ltd should be the same. It was explained that it was not unusual for companies in a position such as that of NEGC Ltd to provide advice and evidence above and beyond the standard local authority submission. The Group Managing Director posited that it would usually take two to three years for a company to reach the point at which NEGC Ltd now finds itself and timings were now structured to move forward as soon as possible after the Inspector gives his opinion on Section 1 of the Emerging Local Plan.

The Panel asked for an explanation as to what added value NEGC Ltd provided, over and above what could have been achieved by officers in-house at the local authorities involved, and what the cost implications were of the staff and resources which had been seconded. The Group Managing Director explained that companies such as NEGC Ltd provided value for money through the co-existence of the work they carried out, and clarified that work on Local Plan issues were carried out in-house by the local authorities themselves, with evidence and support from NEGC Ltd. Masterplanning work carried out within NEGC Ltd had provided useful information to the local authorities, including feeding in to planning and proposed drafting of DPDs. Similar input can also come from commercial developers feeding into the Local Plan process.

In response to questions regarding the spending of NEGC Ltd, and the auditing of the Company, it was confirmed that a mechanism for this was in place, with external auditing of the Company's finances and financial statements being carried out by Scrutton Bland.

The Group Managing Director was questioned as to whether NEGC Ltd had a communications plan which could be seen by the Scrutiny Panel. It was explained to Panel members that the Company had previously adopted a non-proactive approach to communications, but that this is now changing, and the Company is looking to commence pro-active communications following the current Local Plan inspection

process. The full communications programme is due to go to the NEGC Ltd Board for approval on 19 September. This will then be discussed with the shareholding local authorities.

The Chair thanked The Deputy Leader of the Council, the Strategic Director of Policy and Place, and the Group Managing Director of NEGC Ltd for appearing before the Panel and for answering the questions asked of them.

RECOMMENDED to CABINET that:-

- (a) Cabinet seek further evidence and assurance regarding progress delivered, and future deliverability by, North Essex Garden Communities (NEGC) Ltd and provide this information and assurance to Full Council, before Full Council is asked to approve committing the £350,000 already reserved in the 2019/20 Budget and the associated delegations to enable phased drawdowns upon a formal request by way of an NEGC Board resolution in accordance with the agreed milestones.
- (b) Cabinet ensure that there are contingency plans relating to the Council's Emerging Local Plan 2017-2033 which could be considered for use should the Planning Inspector not conclude that the Section 1 Plan of the Emerging Local Plan is sound and compliant with relevant legal requirements.
- (c) Cabinet request NEGC Ltd to provide to elected members clear details of the Company's preferred delivery model as a matter of urgency.

RECOMMENDED to the PORTFOLIO HOLDER FOR BUSINESS AND RESOURCES that he provide information to all elected members regarding positive engagements, progress and potential private-sector investors which developed at or from participation in the MIPIM real estate conference.

229. Scrutiny Work Programme 2019-20

It was confirmed that the Colchester Business Improvement District was to be invited to present an update on its work to the Panel on 17 March 2020.

The Chair suggested that the Panel should report back to Cabinet on its experiences with paperless meetings.

RESOLVED that:-

- (a) The Work Programme be amended to add an item for 17 March to allow a report to be prepared by the Scrutiny Panel to give feedback to Cabinet regarding the Panel's paperless working.
- (b) The duly amended Work Programme 2019-20 be noted.