

NORTH ESSEX AUTHORITIES

Strategic (Section 1) Plan

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To:

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Karen Syrett, Place Strategy Manager, Colchester Borough Council

Gary Guiver, Planning Manager, Tendring District Council

2 August 2018

Dear Ms Goodings, Ms Syrett and Mr Guiver

EXAMINATION OF THE STRATEGIC SECTION 1 PLAN

CLARIFICATION OF OPTIONS IN MY ADVICE LETTER OF 8 JUNE 2018

1. Thank you for your letter of 20 July 2018 seeking clarification on the options set out in my post-hearings advice letter of 8 June 2018. All your queries are about Option 1. Before I respond to each specific query, it may be helpful if I summarise the relevant findings of the examination to date, explain more fully what I consider Option 1 would involve, and offer some comments on your letter. Towards the end of my letter I also make some comments about Option 2.
2. As with my previous two letters, the views expressed in this letter are based on the evidence currently before me. I reserve the right to modify these views in the light of any further evidence that may come forward before the examination ends.

Relevant findings of the examination to date

3. In my Initial Observations and Questions letter to you (16 October 2017), I set out my understanding of the role of the Section 1 Plan. It is to:
 - Set out how the North Essex Authorities [NEAs]¹ will apply the presumption in favour of sustainable development (policy SP1);
 - Define the spatial strategy for North Essex (policy SP2);
 - Set the housing and employment land requirements for North Essex as a whole and for each of the three Local Planning Authority areas in North Essex (policies SP3 & SP4);
 - Identify strategic infrastructure priorities and place-shaping principles for North Essex as a whole (policies SP5 & SP6);
 - Allocate strategic areas for the development of three new garden communities, and set out policy requirements for the development and delivery of those communities, to be elaborated in future Strategic Growth Development Plan Documents (policies SP7, SP8, SP9 & SP10).
4. Subsequent discussion at the hearing sessions confirmed that this definition of the role of Section 1 was generally correct, with one qualification. The role of policy SP2 is to define the spatial strategy for North Essex in broad terms, but each of the NEAs will define a more detailed spatial strategy for its own area in its Section 2 plan.
5. In my advice letter of 8 June 2018 I concluded that the garden community proposals in policies SP7-10 were not adequately justified and had not been shown to have a reasonable prospect of being viably developed. They were therefore unsound.
6. The consequence of that conclusion is that, on the basis of the evidence currently before the examination, the Section 1 Plan cannot be adopted if it contains the existing garden community proposals. If the NEAs wish to pursue proposals for garden communities – or an alternative form of strategic-scale development – substantial further work needs to be done to develop the evidence to support them. My 8 June letter outlines the further work required.
7. Clearly the outcome of any further work could not be predicted in advance. It might or might not result in proposals for one or more garden communities, and/or for another form of strategic-scale development. The crucial requirement is that any such revised proposals must be supported by robust evidence, including sustainability appraisal [SA], taking full account of the conclusions and advice in my 8 June letter.

¹ The three NEAs in the context of this letter are Braintree District Council, Colchester Borough Council, and Tendring District Council

8. Against that background I advised that, in my view, the NEAs had three options for taking forward your Section 1 and Section 2 plans. In brief, and in reverse order, these were:

Option 3 – withdraw both Section 1 and Section 2 from examination and re-submit them after carrying out the necessary further work on the evidence base;

Option 2 – suspend the examination of Section 1 while the necessary further work on the evidence base is carried out and revised proposals are brought forward. Following consultation on the revised proposals, the Section 1 examination would then resume. The Section 2 examinations would not begin until the Section 1 Inspector had heard evidence and reached conclusions on the revised Section 1 proposals.

Option 1 – agree to remove the current garden community proposals from Section 1 and proceed to the Section 2 examinations. Subject to the outcome of the Section 2 examinations and consultation on main modifications, Sections 1 and 2 should then be capable of being adopted. Then carry out the necessary further work on the evidence base and bring forward revised proposals in a partial revision to Section 1, to be submitted for examination within a defined period.

Explanation of Option 1

9. In suggesting Option 1 I had in mind the advice in paragraphs 4 and 5 of the Planning Inspectorate's *Procedural Practice in the Examination of Local Plans*. These advise that

Inspectors, in conducting the examination, will at all times keep in mind the benefits of getting a robust and up-to-date plan adopted ... [C]onsideration will be given to the option of the LPA making a commitment to review the plan or particular policies in the plan within an agreed period, where this would enable the Inspector to conclude that the plan is sound and meets the other legal requirements.

10. Option 1 is intended as a constructive response to the shortcomings I found in the evidence base for the key strategic-scale (garden community) proposals in Section 1. My purpose in suggesting it is to offer the NEAs a way to proceed to the examination of their individual Section 2 plans, and the adoption of both Section 1 and Section 2, more quickly than via Option 2 or 3.
11. Under Option 1 the Section 1 Plan would no longer seek to deal with garden communities, or any other form of strategic-scale development proposals,

in the current examination. Nor would it – or the current Section 2 plans – seek to allocate sites for the 7,500 dwellings which the garden community proposals were intended to deliver within the plan period (see paragraphs 15-21 below). Instead those issues would be deferred to a future partial revision of Section 1. This would enable the sound elements of the current Section 1 to be adopted along with your Section 2 plans (subject to examination of the latter).

12. Under Option 1, therefore, main modifications to Section 1 would remove the garden community proposals from the plan, make consequential amendments to other policies where necessary, and make it clear that a partial revision to Section 1 containing revised development proposals would be submitted for examination within a defined period. The NEAs' Local Development Schemes [LDS] would need to be revised to reflect the altered scope of the existing Section 1 Plan and the scope and timing of the partial revision.
13. As the revision to Section 1 would be only a partial revision to the current submitted plan, it would apply to the same plan period (ending in 2033) as the current plan. But the examination of the partial revision would be a new examination, separate from the current one.
14. It would be for your authorities to decide how long is needed to bring forward the partial revision to Section 1. In my 8 June letter I suggested that two to three years would be a realistic period to allow time for the current Section 1 and 2 examinations to be completed, and for the necessary further work on the evidence base and consultation on the revised proposals to be carried out.
15. As submitted, Section 1 envisages that the proposed garden communities would deliver 7,500 dwellings during the plan period which ends in 2033. Option 1 would mean that the Section 1 Plan would be adopted without those 7,500 dwellings. One of the main tasks for the partial revision of Section 1 would be to bring forward proposals to provide an equivalent amount of housing, provided that such proposals are supported by evidence.
16. A commitment to do this would be written into the current Section 1 Plan, as part of the main modifications. As a result, the current plan would not be made unsound by the deletion of the 7,500 dwellings associated with the current, unsound garden community proposals. As modified, the current Section 1 Plan would still provide the means to bring forward (in combination with the Section 2 plans) sufficient dwellings to meet the overall housing requirement for the plan period. The majority of those

dwellings are already allocated in the current Section 2 plans, and provision for the remaining 7,500 would be made in a plan revision.

17. It is, of course, possible that when the necessary further work on the evidence base is complete, the NEAs may conclude that it is not possible to bring forward garden community proposals or other strategic-scale development proposals to deliver all 7,500 dwellings. The implications of that situation would need to be considered if and when it occurred. The NEAs might, for example, need to consider also making partial revisions to one or more of their Section 2 plans, concurrently with the revision to Section 1, to bring forward additional non-strategic sites to make up the shortfall. But it is not something that would need to be considered in the context of the current Section 1 and 2 examinations, if Option 1 is adopted.
18. The “Justified” soundness test in NPPF paragraph 182 requires that the plan should be the most appropriate strategy when judged against the reasonable alternatives, based on proportionate evidence. Under Option 1, the Section 2 examinations will assess whether the Section 2 plans are the most appropriate strategy to deliver each of the NEA’s individual housing requirements, minus the 7,500 dwellings that were intended to come forward from the current garden community proposals. Additional sites to provide those 7,500 dwellings would be brought forward in the partial revision to Section 1 (and to Section 2 if necessary), as described in paragraphs 15 to 17 above. It would not be necessary to assess the strategy for delivering those additional sites in the current Section 2 examinations.
19. Examinations normally seek to establish whether there is a reasonable prospect that a five-year supply of housing sites to meet the full plan requirement will be maintained throughout the plan period. However, in the particular circumstances of this examination, Option 1 would require that the current Section 2 plans identify sufficient sites to maintain a five-year supply of deliverable sites against each NEA’s full plan requirement only during the period before the partial revision to Section 1 is to be adopted.
20. For example, if the partial revision is programmed to be adopted in 2022, the current Section 2 plans would need to show that an adequate supply against each NEA’s full plan requirement could be maintained for each five-year period from now until the five-year period beginning in 2022. For subsequent five-year periods the five-year supply in the current Section 2 plans would be judged against each NEA’s plan requirements, minus the 7,500 dwellings to be brought forward in the partial revision to Section 1.

21. This means that it would not be necessary for the NEAs to identify additional sites in the current Section 2 plans, unless the removal of the garden community proposals would result in a shortfall in the five-year supply at any point during the period before the partial revision to Section 1 is adopted.

Comments on your letter of 20 July 2018

22. In the fifth paragraph of your letter of 20 July 2018 you say that

In order to modify Section 1 to remove the Garden Communities we would need to carry out an updated Sustainability Appraisal and, given the scale of the change, advertise both. The Sustainability Appraisal would have to consider the Garden Community options as a realistic alternative to what would then be a decision not to have a spatial dimension to housing delivery. At the moment we have not identified any additional evidence required to support the Option 1 changes to Section 1. If there are objections from the promoters then we are assuming that there would need to be a further hearing into those objections before you can report and reach a conclusion on whether the modified Section 1 is sound.

23. I do not agree with that analysis, for the following reasons. I am required by legislation² to recommend main modifications that would make the Section 1 Plan sound (if the NEAs ask me to do so). My 8 June letter sets out the reasons why the current garden community proposals are unsound. Unless additional evidence comes forward, those reasons would provide the justification in my report for main modifications to remove those proposals from the Section 1 Plan. No additional evidence from the NEAs would be required to justify the main modifications. Further hearings to discuss the main modifications would only be necessary if substantial issues, not already considered during the Section 1 examination, arose from the consultation responses.

24. It is for the NEAs to determine whether, and to what extent, SA of the main modifications to the Section 1 Plan, and of any reasonable alternatives to them, is required. In doing so you may wish to refer to the judgment in the case of *Grand Union Investments v Dacorum Borough Council* [2014] EWHC 1894 (Admin), which has some similarities with my suggested Option 1. In his judgment, Lindblom J determined, among other things, that

the requirement to assess likely significant effects on the environment of reasonable alternatives is specifically a requirement to consider reasonable alternatives to the implementation of a plan, not alternatives to every modification of a plan, including modifications which do not in themselves constitute substantive proposals. It is predicated on the existence of reasonable alternatives to the

² Section 20 of the *Planning and Compulsory Purchase Act 2004*, as amended

preferred strategy which are capable of being assessed in the same way, whether or not to the same depth, as the preferred strategy itself (see, for example, the judgment of Ouseley J. in *Heard v Broadland District Council* [2012] EWHC 344 (Admin), at paragraphs 69 to 71). Main Modification 28 did not amount to a new policy or allocation in the core strategy, but a commitment by the Council to an early review of it. There was, therefore, nothing by way of an alternative policy or allocation to assess [paragraph 94 of the judgment].

25. In any event, it seems to me that there would be no requirement to assess the retention of garden community proposals in the Section 1 Plan as a reasonable alternative to main modifications deleting them from the plan, as the fifth paragraph of your letter appears to suggest. This is because, first, the current garden community proposals have already been the subject of SA during the preparation of the plan, and secondly, it is difficult to see how their retention could now be considered as a reasonable alternative, given the conclusions I reached on them in my 8 June letter. The appropriate time for SA of any garden community or other strategic-scale development proposals would be if and when they are brought forward as part of the plan revision, supported by further work on the evidence base.
26. Paragraph 6 of your 20 July letter refers to my observation that in preparing for the Section 2 examinations the NEAs would need to consider any implications of the removal of the current GC proposals for housing land supply in each authority area, in the years before the partial revision comes forward. Your paragraphs 6 to 8 go on to make the following points:
 - a) As a new plan the partial revision would need to address the updated housing numbers in accordance with the NPPF.
 - b) If garden communities are still proposed in a partial review, given that there would be a 5 year+ delay before the adoption of garden community policies it is unlikely that any of the garden communities would be able to make a material contribution to housing supply in the period up to 2033.
 - c) Removing the garden community proposals from Section 1 would result in a significant shortfall in the supply of housing sites in the Section 2 plans to meet needs up to 2033, particularly from year 6 onwards.
 - d) An implication for the NEAs of removing garden communities from Section 1 would therefore be a requirement to consider whether the present allocations and patterns of development in Section 2 would be appropriate if the garden communities did not come forward as part of a future revision of Section 1.
 - e) Even if garden communities are included in the Section 1 revision since they would not be able to make a material contribution to housing delivery in the period to 2033 other options for delivering housing would have to be explored within the Section 2 plans.
 - f) The NEAs would therefore also have to assess additional sites and potentially modify and re-consult on the Section 2s before progressing to the examinations. An updated Sustainability Appraisal would be required.

27. I would make the following comments on those points. I assume your point (a) refers to the new arrangements for assessing housing need contained in the revised NPPF published last week. It seems to me that, under Option 1, the partial revision to Section 1 would not necessarily need to revisit the justification for the NEAs' housing requirement figures. Essentially, whether or not it did would depend on how the purpose of the partial revision is defined, including in your LDSs³. On the other hand, it is true that paragraph 33 of the revised NPPF does indicate that plans are likely to require early review if local housing need is expected to change significantly in the near future. You may wish to seek further legal advice on this point.
28. If the revision to the Section 1 plan did revisit the NEAs' housing requirement figures, and found that they needed to change, then the plan revision would of course need to meet the altered requirements in full.
29. Your point (b) suggests it is unlikely that any garden community or other strategic-scale proposals brought forward in a partial revision would be able to make a material contribution to housing supply in the period up to 2033. But in my 8 June letter I found that the planning approval process would allow housing delivery at any garden communities to start within four or five years from the adoption date of the plan (or plan revision) which establishes the garden communities in principle.
30. Assuming that a partial revision to the Section 1 plan comes forward in two or three years' time, and the examination takes a year, the partial revision could in principle be adopted in 2021 or 2022. On those assumptions, there would seem to be a reasonable prospect that any strategic-scale development proposals proposed in a partial revision would be capable of beginning to deliver housing at some point between 2025 and 2027.
31. For my comments relevant to your points (c) to (f), see paragraphs 15 to 21 above.

Responses to your specific queries

32. All the responses below apply to my suggested Option 1 only.
- 1) Do you agree that the removal of the GC proposals from Section 1 will require an updated SA before Section 1 could be adopted?

³ See *Oxted Residential Ltd v Tandridge DC* [2016] EWCA Civ 414, and *Gladman Development Ltd v Wokingham BC* [2014] EWHC 2320 (Admin)

33. That will depend on whether or not the proposed main modifications to Section 1 would have any effects that have not already been assessed in the SA work carried out to date. See paragraph 24 above.
- 2) If the SA has to be updated then it will have to address the GC proposals as a realistic alternative. In order to do so do you agree that it will need to address the limitations that you have found in relation to the existing SA?
34. I do not agree that SA of the proposed main modifications would have to assess the current garden community proposals as a reasonable alternative. See paragraphs 24-25 above. However, the limitations in the existing SA would need to be addressed when preparing the evidence base for the partial revision.
- 3) If Section 1 is modified as proposed will you require further examination days to deal with the objections from the promoters of those sites if they make material objections to the deletion of the relevant policies?
35. That will depend on whether or not the responses to consultation on the main modifications raise substantial issues that have not already been considered. See the last sentence of paragraph 23 above.
- 4) Do you agree that the "implications" that have to be considered include the possibility that the GC proposals will not be promoted in a revised future Section 1?
36. Not in the context of the current Section 2 examinations. They might need to be considered when the partial revision to Section 1 is brought forward, depending on what is proposed in it. See paragraph 17 above.
- 5) Do you agree that the Section 2 plans will need to be reviewed to consider whether they still represent the "most appropriate strategy"?
37. The current Section 2 examinations would need to establish whether the Section 2 plans represent the most appropriate strategy to deliver each NEA's housing requirement, minus the 7,500 dwellings that the current garden community proposals are intended to deliver. The strategy to deliver those 7,500 dwellings would be a matter for the partial revision to Section 1 (and Section 2 if necessary). See paragraphs 15-18 above.
- 6) In the submitted Local Plans, the garden communities begin delivering housing numbers from 2023/24. Do you agree that the Section 2 plans will need to be revised to include replacement housing sites given that under Option 1 the GC proposals (even if pursued through a later review) will no longer be able to make a material contribution to housing supply in the plan period?

38. Possibly, but only to the limited extent set out in paragraphs 19 to 21 above. For the reasons given in paragraphs 29 and 30 above, I disagree with the premise that, under Option 1, strategic-scale development proposals (even if pursued through a later review) will no longer be able to make a material contribution to housing supply in the plan period.

7) Do you agree that section 2 cannot proceed until the issues of soundness relating to Section 1 are addressed?

39. Under Option 1, the issues of soundness relating to Section 1 would be addressed by the main modifications I have outlined in paragraph 12 above. This would allow the Section 2 examinations to proceed and the sound elements of the current Section 1 to be adopted along with the Section 2 plans (subject to examination of the latter).

Option 2 – scope of and timetable for further work

40. Should the NEAs decide to proceed with Option 2, the current examination would be suspended while the NEAs carry out the necessary further work on the evidence base, as outlined in my 8 June letter. Guidance on the suspension procedure is given in the Planning Inspectorate's *Procedural Practice in the Examination of Local Plans*, at paragraphs 9.13 to 9.17. As outlined in that guidance, I would expect to discuss and agree with the NEAs the scope of and timetable for the additional work needed. The guidance also makes it clear that LPAs should be realistic in making their timing estimates and that the Inspector will request regular updates on progress during the suspension period.

Concluding remarks

41. I hope this letter is helpful in clarifying what Option 1 would involve. Please do not hesitate to contact me again, through the Programme Officer, if you wish to seek any further clarification.

42. I understand that the NEAs will need to consider carefully which of the three options I have outlined, or any alternative course of action, they now wish to pursue. I look forward to hearing from you when this has been decided.

Yours sincerely

Roger Clews

Inspector