

Leader of the Council

Contact Councillor Paul Smith

Phone (01206) 282244 Fax (01206) 282358

E-mail PAtoCabinet@colchester.gov.uk

Your ref

Our ref PS

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Garden Cities, Towns and Villages Team
Department for Communities and Local
Government
3rd Floor – Fry Building
2 Marsham Street
London SW1P 4DF

Dear Sir or Madam,

The New Towns Act 1981 (Local Authority Oversight) Regulations

Introduction

1. This response is submitted by Colchester Borough Council in response to the Department of Communities and Local Government consultation regarding the Draft New Towns Act 1981 (Local Authority Oversight) Regulations 2018 ("the Draft Regulations").
2. This is submitted in addition to those representations made by the North Essex Garden Communities Limited ("NEGC"). Colchester Borough Council, Essex County Council, Braintree District Council and Tendring District Council are referred to in this response as ("the North Essex Authorities").
3. The North Essex Authorities and NEGC are promoting three garden communities in their local plans. The local plans share a common "Section 1" that sets out the spatial strategy for North Essex and the vision for the three proposed garden communities.
4. Subject to the adoption of the local plans, The North Essex Authorities and NEGC anticipate the designation of the three garden communities as locally-led new towns, with potentially a single development corporation being incorporated to deliver the new communities. The North Essex Authorities will, together, be the Oversight Authority. It is anticipated that they will appoint NEGC to act on their behalf.

5. In summary, The North Essex Authorities and NEGC welcome the Draft Regulations with one exception. This relates to the £100m limit on outstanding borrowing, the Draft Regulations are workable at a locally-led development corporation level and provide the foundation for the authorities to deliver high quality new communities, much needed housing and the necessary supporting infrastructure. Over and above that, the Draft Regulations could be improved to provide greater flexibility about the way in which local authorities, oversight authorities and development corporations will inter-relate over the lifetime of the delivery of the new communities.

The Key Concern

6. The Draft Regulations suggest a cap on outstanding borrowing of £100m without Treasury Consent. The North Essex Authorities and NEGC believe that this is impractical and is likely to impede, if not prevent, delivery of their plans. In practice, large garden city developments of 10,000 homes and above incur levels of infrastructure costs in the order £50,000 per home and significant land costs, which will largely be debt-funded ahead of land receipts. It is likely to limit the ambition of local authorities who face substantial pressures to accommodate economic and housing growth. The net result would be to delay and increase the costs of delivering much needed housing, all of which would limit economic growth.
7. While appreciating the concern about aggregate public debt, there is a practical concern about the exercise of future Treasury control over borrowing during the development process that is to be locally led. In particular, the need for a future consent to meet, for example, infrastructure funding commitments and/or delivery timetables, makes it less likely that the authorities will in practice be able to or indeed willing to take the necessary long-term decisions and undertake the necessary long-term commitments required to deliver garden communities. It is also counter-intuitive to the objectives of locally-led development corporations and jeopardises the Government's housing delivery ambitions. The authorities are also concerned that, for example, future conditions might be attached to any consent, perhaps requiring the divestment of assets in a way that cuts across or is counter-

intuitive to the actual objectives for garden cities as expressed in the Draft Regulations.

8. Importantly, an on-going borrowing cap and potential uncertainties around Treasury consent is unlikely to be acceptable to third-party private investors or funders. They will want to know that there is access to all funding necessary to secure the value in land required to repay their interests. Having a Treasury agreed limit would also, potentially, put the Treasury at risk – holding out some form of tacit guarantee of that level of borrowing.
9. Our firm view is that there should be no corporation-specific ongoing borrowing cap. In practice, in order to secure debt funding any development corporation will either have to demonstrate a credible business case to lenders or, if borrowing via the local authorities, will have to address the existing controls (for example, a Treasury Green Book compliant business case) that affect them. Treasury oversight of this, in addition to the designated oversight authority responsibilities, seems unnecessary. If there is felt to be a need to consider a limit, we would suggest that each garden city project and associated development corporation would provide a financial framework (for example, demonstrating that loans are capable of being repaid in due course) within which it would be expected to operate and which would be considered on its merits at the point of application for a mandate by DCLG in conjunction with Treasury and other 'investing' Government departments.
10. It follows that the proposal to continue with the aggregate development borrowing cap across all the garden city/town projects poses similar risks the Government's housing delivery plans and is similarly counter-intuitive to the objectives of the draft legislation. The aggregate debt ceiling was understandable in the previous round of New Town Development Corporations, since each and every one was accountable to the same Department of central government and could only borrow from that same source. However, the oversight of locally-led development corporations will be carried out by many different local authorities across the country, where there would be different interrelationships between their respective risks or returns.

11. Critically, it would introduce an uncontrolled third party risk: namely, that the future borrowings of a unrelated development corporation pushes the aggregate level of debt above the specified level, limiting the ability of any 'compliant' individual development corporation even to borrow within its own limit. Our firm view therefore is that an aggregate cap is not required. It is certainly not required if there are individual controls over the borrowing of each development corporation

Consultation Response

The following paragraphs are Colchester Borough Council's response to the Consultation questions.

Principles

Question 1: Do you support the principle of enabling oversight of the development of an area as a new town to be transferred from the Secretary of State to the local authority or authorities covering the area in the circumstances outlined in paragraphs 2.1 to 2.4?

- 1 The North Essex Authorities and NEGC support the principle of the transfer of oversight of a new town from the Secretary of State to a local authority or authorities.
- 2 As suggested in the Consultation paper (paragraph 2.3) we accept that a strong evidence base will be required to demonstrate that the site or sites are suitable for development at the scale proposed, and that appropriate consultation has been undertaken. Clearly, if a site has been designated in a local plan then those conditions will normally have been met in the local plan having been found to be "sound".
- 3 There is an explicit power to reduce the size of a new town. There is an inherent power in the Secretary of State to increase the area. It would be useful for this inherent power to be explicit in the Draft Regulations so that it is clear that the area can be enlarged if necessary and still fall within the same new town and be the responsibility of the designated development corporation.

- 4 When the Draft Regulations are published it would be helpful if they could be supported by guidance from DCLG about the nature and form of any request for designation, and the time that requests should be made.

Transfer of Functions

Question 2: Do you agree that the proposed list of functions to be transferred and functions that may only be exercised with the consent of the oversight authority is the correct one? If not, please specify which other functions you think should or should not be transferred and why.

Question 3: Where the draft Regulations provide for the transfer of functions has this been done correctly? If not please specify the changes you think are required.

- 1 The North Essex Authorities and NEGC agree that the functions being transferred are correct as far as they go and that the drafting arrangements for transfer work.
- 2 The approach adopted in the Draft Regulations is to replicate for the oversight authority the functions carried out by the Secretary of State for an "old style" new town. In fact, the 2017 legislation allows the Draft Regulations to go further. It enables the amendment of other legislation to the extent necessary to secure the success of locally led new towns.
- 3 Old style new towns did not have development control, development plan or CIL setting powers (the additional planning powers). Recent development corporations, both urban development corporations and mayoral development corporations, have had different powers, tailored to their local context and objectives. For example, the Old Oak and Park Royal Development Corporation and London Legacy Development Corporations between them have all three powers. The Milton Keynes Partnership had development control powers as did West Northamptonshire and London Thames Gateway. Planning systems in North America and Europe provide more certainty than in the UK and as a result both the quality and pace of housing delivery is of a higher order more akin to the Government's ambitions. A modern, locally led, development corporation may wish to be able to take advantage of these

powers if that is appropriate for their proposals and agreed with the local authority sponsors.

- 4 The North Essex Authorities and NEGC believe that the Draft Regulations should include provision that allows the additional planning powers to be exercised by a development corporation if the relevant local authorities believe that to be necessary. When requesting a new town designation the local authority or authorities could then make the case. The designation order could then provide for the transfer of those functions. The ability to transfer or delegate these powers might not need to commence immediately, might need to be suspended and/or terminated and might, in the case of development control, only relate to certain categories of development. The provisions in the Draft Regulations should allow for this flexibility should that be agreed locally.

Quality, design and stewardship

Question 4: Do you agree that the draft Regulations appropriately support the delivery of high quality, sustainable communities and their long-term stewardship? If not, how should they go further or include less prescription?

- 1 We accept that there may be limitations about the extent to which the objects of development corporations in section 4 of the New Towns Act can be extended. Any new town development corporation should, primarily, be concerned with the delivery of a high quality sustainable community. However, the duty to have regard to sustainable development and good design requires a clear focus on longevity and, in the case of community assets this requires early consideration and planning to ensure that well designed and delivered amenities such as parks are properly maintained in perpetuity. We therefore agree that the responsibility for ensuring these duties are delivered should be through the oversight authority.
- 2 We endorse the aims of the oversight authority, including a need to consider and plan from the outset for the long term stewardship of the new town assets say through a legacy plan. The responsibilities of the oversight authorities will then include ensuring that the development corporation manages the development

programme and asset disposal/transfer in a way that delivers long term stewardship in accordance with its legacy plan.

- 3 We believe that the aim in relation to stewardship applied to oversight authorities should be expanded to arise at the outset as proposed and also be expressed to apply up to and on dissolution, so that any Regulation 41 request for the apportionment of assets is made having regard to that aim.

The Board of the New Town Development Corporation

Question 5: Do you agree with the proposals for Board membership set out in Paragraph 22 of Schedule 1 of the draft Regulations? If not, how should these be changed?

- 1 We agree with the proposals for board membership.

Other Issues

Question 6: Are there any issues with the draft Regulations not picked up in the questions above you would like to raise? If so, please set these out.

- 1 As noted above it would be helpful to have guidance from the Secretary of State on the conditions that will need to be met in order for a new town to be designated and a development corporation incorporated.
- 2 It will be necessary for the guidance relating to compulsory purchase orders to be updated. At present there is no guidance in relation to new towns, and the original guidance will need to be updated. In particular, it will need to make it clear that, if requested by the development corporation, the Secretary of State will be willing to confirm an order permitting the acquisition of the whole (or a large part) of the new town area at the outset. The development corporation (and the underlying local authorities) will want to be clear that the land asset is available before committing to the infrastructure investment necessary to deliver a high quality garden community.

- 3 There are a number of issues which arise in North Essex which may not arise in other cases. For example there are proposed to be up to three communities in North Essex. Each community will be developed at a different timescale and involves different local authorities. We believe that the oversight regulations should allow flexibility to adapt the general oversight regulations to suit particular cases.
- 4 An example of an issue which may need to be addressed are that the three communities are likely to be completed at very different times. It would be sensible for the regulations creating the North Essex Corporation to:
 - to permit assets/liabilities relating to a particular community to be distributed when that community is completed.
 - to change the composition of the oversight authority to allow removal of local authorities once all the communities in which they have an interest are completed.

We look forward to receiving DCLG's comments on the responses to the Consultation in due course.

Yours sincerely

Councillor Paul Smith
Leader of the Council