

**NORTH ESSEX AUTHORITIES****Strategic (Section 1) Plan****Inspector:** Mr Roger Clews**Programme Officer:** Andrea Copsey**Tel:** 07842 643988**Email:** [copseyandrea@gmail.com](mailto:copseyandrea@gmail.com)**Address:** Examination Office, Longcroft Cottage, Bentley Road, Clacton-on-Sea, Essex CO16 9BX

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To:

Emma Goodings, Head of Planning Policy & Economic Development, Braintree District Council

Karen Syrett, Place Strategy Manager, Colchester Borough Council

Gary Guiver, Planning Manager, Tendring District Council

21 November 2018

Dear Ms Goodings, Ms Syrett and Mr Guiver

**EXAMINATION OF THE STRATEGIC SECTION 1 PLAN****NEAS' PROPOSALS FOR TAKING THE EXAMINATION FORWARD**

1. Thank you for your letter of 19 October 2018 setting out the North Essex Authorities' [NEAs'] views on the way in which they would like the examination of the Strategic Section 1 Plan [the Plan] to be taken forward. I am sorry for the delay in replying but, as you know, I wanted to seek the NEAs' response to correspondence regarding the legal compliance of the Sustainability Appraisal [SA] process before doing so. I will deal with that matter under the SA heading below.
2. I have considered the contents of your letter and the three documents enclosed with it: the *Summary of NEAs' ongoing evidence base work*, the *North Essex Local Plan Section 1 Additional Sustainability Appraisal Method Scoping Statement* prepared by LUC, and the legal opinion of Mr Lockhart-Mummery QC dated 8 August 2018<sup>1</sup>.

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<sup>1</sup> These all form document NEA005 on page 4 of the examination website

3. In what follows I aim to respond where necessary to the points and queries in your letter and, where relevant, the enclosures. However, as you will appreciate, I am not able to express any view on whether or not your proposals will enable the Plan to be found sound. Nor would it be appropriate for me to comment on the merits of any suggested change to the Plan.
4. For ease of reference, my letter uses the same sub-headings as yours. References in square brackets [X] below are to specific paragraphs in your letter.

#### Agreed approach

5. I understand from your letter that the NEAs wish to proceed broadly along the lines described as Option 2 in my letter of 8 June 2018 [2-4]. In this regard, I welcome your statement that the NEAs will ensure that the Plan, and the evidence base to support it, are progressed with strong evidence of constructive engagement and involvement with local communities throughout the plan, and acceptance derived locally [3].
6. Later you say that the revised Sustainability Appraisal and the updated evidence base will enable the NEAs to decide whether they wish to pursue or amend the Plan strategy [14]. This indicates that the NEAs are approaching the necessary further work on the SA and the evidence base with an appropriately open mind and without preconceptions as to the outcome. That is important if the further work is to be carried out successfully. I assume that the last sentence of paragraph [2] of your letter is to be read in that context.
7. I note that the NEAs propose a revision to the Plan to include a review mechanism in the event that strategic infrastructure investment does not come forward as planned [5]. I assume that consultation on any such proposed revision would take place alongside consultation on the updated evidence base and SA [17]. In addition, it is likely to be subject to discussion at the examination hearings. Moreover, as you will be aware, if the proposed revision (or any other proposed change to the Plan) materially affected any of the policies in the submitted Plan, it could only be made if I considered it necessary to make the Plan sound and recommended it as a Main Modification<sup>2</sup>.

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<sup>2</sup> See paragraphs 10 to 12 of my Initial Observations and Questions letter [IED001]

### The Evidence Base work programme (excluding Sustainability Appraisal)<sup>3</sup>

8. I have reviewed the document *Summary of NEAs' ongoing evidence base work*, which was enclosed with your letter. The first column of the table in that document correctly identifies the issues in my post-hearings advice letter to the NEAs of 8 June 2018 on which further work on the evidence base is needed. **For completeness, I would ask that paragraphs 72-73 and 83-84 of my 8 June letter are also referenced in the "Viability evidence" section, and that paragraph 132 is also referenced in the "Infrastructure planning, phasing and delivery" section.**
9. The second column of the table summarises the NEAs' approach to addressing the identified issues, setting out the scope of the further work on the evidence base which is to be carried out. I have only one comment to make on the contents of this column, as follows. **It is unclear from the summary whether or not the proposed further work on the rapid transit system (RTS) is intended to cover all the points in paragraphs 42 & 43 of my 8 June letter. I would be grateful if you would provide further clarification on this.**
10. As you will appreciate, it is not possible for me to say at this stage whether the outcomes of the further work summarised in the second column of the table will adequately address the shortcomings I identified in my 8 June letter. That will be for the examination to consider when the further work is complete.

### Sustainability Appraisal

11. I have reviewed the *North Essex Local Plan Section 1 Additional Sustainability Appraisal Method Scoping Statement* [the LUC Method Scoping Statement], which was enclosed with your letter. **My comments on it are set out in a table annexed to this letter (on page 8). I would be grateful for a response to each of them.** They are provided without prejudice to any conclusions I may reach after considering the final SA report and any written and oral representations made on it.
12. Lightwood Strategic wrote to the Programme Officer on 24 October 2018 raising, among other things, a number of points on the legal compliance of the SA process for the Plan (the Lightwood letter is examination document EXD/039). I am not inviting or accepting comments on the content and

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<sup>3</sup> The NEAs' proposed approach to Sustainability Appraisal is considered separately in the next section.

timescale of your proposals for further work. But because the Lightwood letter raised specific legal compliance points, I considered it necessary, first to seek clarification from Lightwood of three points in their letter (see document EXD/040), and then to seek a response to their letter from the NEAs. The Programme Officer received the NEAs' response on 19 November 2018 (document EXD/041).

13. Lightwood's points concern (a) LUC's proposal to use different evaluation criteria from those used previously for the further SA work that they propose to undertake, and (b) whether there has been a proper scoping process for the Section 1 Plan as a whole. In respect of point (a), LUC propose consultation with both the statutory consultation bodies (the Environment Agency, Historic England and Natural England) and with participants in the examination hearings over the scope and level of detail to be included in the SA report<sup>4</sup>.
14. I assume that the reference here to "participants in the examination hearings" means all those who took part in the hearing sessions held between 16 and 25 January and on 9 May 2018. **Please confirm that this is the case.** I also infer from the LUC *Method Scoping Statement* and the NEAs' letter of 19 November 2018 that the proposed consultation will include consultation on the revised assessment criteria that are to be used in the further SA work. **Again, please confirm that this is the case.**
15. If my assumption and inference are correct, on the information currently before me I consider it unlikely that substantial prejudice to any party would arise specifically from changes in the evaluation criteria to be used in the further SA work, given the extent of the proposed consultation process on any such changes. However, I reserve the right to reconsider that view in the light of any legal opinion(s) that may be submitted (see below).
16. Lightwood's point (b) is a wider one, questioning whether the SA scoping process, including consultation, that has been carried out for the Section 1 Plan as a whole is legally-compliant. The NEAs' response on this is as follows:

Initially each of the NEA local planning authorities was working on an individual plan before the decision was made to combine the strategic sections of the Local Plan.

An SEA for that strategic section of the Local Plan was prepared taking account of the responses from the consultation bodies. No complaint has been raised, to date, about that approach<sup>5</sup>.

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<sup>4</sup> Paragraph 2.22 of the LUC *Method Scoping Statement*

<sup>5</sup> EXD/041, paras 4 & 5

17. Notwithstanding an absence of complaints, **I suggest that it would be prudent for the NEAs to seek a legal opinion** on whether the process they describe here meets the requirements of the *Environmental Assessment of Plans and Programmes Regulations 2004*, and in particular Regulation 12(5) in respect of consultation on the scope and level of detail of the SA report for the Section 1 Plan as a whole. The legal opinion would need to consider whether the relevant requirements of the Regulations have been followed; and if any have not, whether any prejudice potentially caused thereby is capable of being remedied, and what the necessary remedial steps would be.
18. I note from their email of 5 November 2018 that Lightwood are seeking a legal opinion on the points raised in their letter. It would be premature for me to reach any finding on point (b) before I have seen that opinion and any legal opinion that may be sought by the NEAs.

#### Overall programme

19. Proposed timescales for further work and consultation on the evidence base and on SA are set out in your letter [17-23]. The NEAs are in the best position to determine what resources are needed to carry out the further work, and how long it is likely to take. I do not have the necessary information to comment in detail on these points. In general terms, however, I would advise that the NEAs should take as much time as is needed to ensure that the further work addresses all the shortcomings in the evidence base and the SA that were identified in my 8 June letter. In order to avoid further delays to the examination, it is vital that all the necessary further work is complete when the examination resumes, even if that means extending the original timetable for its preparation.
20. I agree that it would be appropriate for the examination to be suspended until all the NEAs have considered and approved the updated evidence base and SA and confirmed their position on the Plan's strategy [21]. If the current proposed timetable is kept to, I confirm that I would be available to carry out hearing sessions in June 2019. However, your proposal for a monthly review and report on progress on the further work [22] is a sensible one. It will enable the examination timetable, and the suspension period, to be adjusted if that becomes necessary. **I would like the NEAs to provide a report to me at the end of each calendar month, beginning at the end of November 2018.**
21. For the avoidance of doubt, the monthly reports should deal only with progress made in taking forward the necessary further work on the evidence base and SA, and any necessary adjustments to the timescales for this work. They should not provide details of its content, as it would be

inappropriate for me to consider evidence in preparation while the examination is suspended.

22. Subject to my comments on paragraph 7 above, I am content for public consultation on any changes which the NEAs may propose to the Plan to be carried out alongside consultation on the evidence base and SA [18]. I will provide comments on the proposed changes already suggested by the NEAs, as set out in document SD002a, to you separately via the Programme Officer by 21 December 2018 [19].
23. I would like to be advised of, and have the opportunity to comment on, the NEAs' detailed proposals for consultation on the evidence base, SA and any proposed changes to the Plan, before the consultation arrangements are finalised [17-18].

#### Examination process

24. Paragraph 214 of the current *National Planning Policy Framework* (July 2018) makes it clear that the policies in the previous Framework apply for the purposes of examining plans, where those plans are submitted on or before 24 January 2019. Because the Plan was submitted for examination in October 2017, I confirm that the policies in the previous Framework (March 2012) apply for the purposes of examining it [24]. Similarly, any previous guidance in national *Planning Policy Guidance* [PPG] that has been superseded since the current Framework was published will continue to apply for the purposes of examining the Plan<sup>6</sup>.
25. I acknowledge the NEAs' concern to ensure that they and other examination participants have an adequate opportunity to respond to issues raised on the further evidence that is to be prepared, including the evidence on viability [25]. I will give further thought to your suggestions for managing the submission of hearing statements and to the arrangements for the hearing sessions. These are matters that can be discussed, if necessary, once all the further work on the evidence base and SA has been completed.

#### Adoption of Section 1

26. The legal opinion from Mr Lockhart-Mummery QC enclosed with your letter advises that the NEAs may lawfully adopt their Section 1 Local Plans separately from, and in advance of, their Section 2 plans (subject to my examination report finding that the Section 1 Plan is, or can be made, sound) [26]. I note that the NEAs do not seek any further comment on this

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<sup>6</sup> See the explanatory note at the beginning of the PPG chapter on Local Plans

matter [27]. In any case it would be inappropriate for me to comment on it, as my jurisdiction over the Plan will come to an end when my report is issued. Section 23 of the 2004 Act<sup>7</sup> makes it clear that whether and when to adopt the Plan are matters for each NEA to decide.

### Summary

27. I am grateful for the NEAs' constructive proposals for taking the examination forward. I have highlighted **in bold** above the points on which I would like further information or confirmation. Once those points have been resolved, I will be in a position to set the examination suspension period, subject to review as explained in paragraph 20 above.

Yours sincerely

*Roger Clews*

Inspector

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<sup>7</sup> The *Planning and Compulsory Purchase Act 2004* (as amended)

## ANNEX

### **Inspector's comments and queries on the North Essex Local Plan Section 1 Additional Sustainability Appraisal Method Scoping Statement**

Table 2.3	There are marked differences in the amount and the content of the information for each site provided in the "Description" and "Site-specific infrastructure assumptions" column of Table 2.3. For some the information is brief and factual, for others it is longer and more descriptive. The information provided to LUC must enable each site to be assessed on an equivalent and objective basis.
Table 2.4	Two SA objectives (1 & 2) are identified as having been scoped out of the Stage 1(a) assessment and accordingly have no corresponding assessment criteria in the list at Appendix 1. But the list of criteria at Appendix 1 appears to contain no criteria for SA objective 5 either. Was objective 5 also scoped out, and if so on what basis?
Paras 2.45-2.46	I acknowledge that professional judgment is a necessary and valid part of SA. Nonetheless, I would draw attention to the comments on objectivity of assessment in paragraphs 97-103 of my 8 June letter. In particular, when assessing the mitigation / benefits provided by new facilities and infrastructure, evidence will be needed to show that those facilities and infrastructure are capable of being provided at the point in time envisaged.
Para 2.47	In order to enable a full comparison of the alternatives, I recommend that in Stage 2 the spatial strategy options are appraised <u>both</u> in their entirety (ie as fully built out) <u>and</u> on the basis of what is expected to be delivered by the end of the Plan period. (This may have implications for the Stage 1b analysis as well.)
Para 2.49	In order to preserve the objectivity of the process, care will need to be taken in choosing which stakeholders to invite to the "check and challenge" workshop, so as to ensure that a representative range of interests are included.