



MATTER 4

RESPONSES OF LOUGHTON TOWN COUNCIL ("LTC")

ISSUE 1

Does the distribution of development in the Plan places too much reliance on the Garden Community Sites around Harlow at the expense of testing capacity of the other settlements in the District?

Generally

1. It is the case of LTC that the Garden Community sites have capacity to absorb further growth than has been identified in the Plan. The Plan absolutely does not place too much reliance on the Garden Community Sites. Indeed, it should place more reliance on them for the delivery of growth, as opposed to cramming existing urban areas which cannot deliver the necessary infrastructure to accommodate this growth and which will be negatively impacted by it.
2. The strategy of focussing growth in urban areas is flawed. The growth proposed at Jessel Green, for example, could be more sustainably absorbed in the more appropriate location of the Garden Community thereby reducing unnecessary harm from the loss of vital community facilities and green space elsewhere.
3. Development should also be located away from the Central Line, where, as is identified there already exists a capacity constraint, which has not adequately been identified by or tested in the Plan.

Question 2

Could a higher level of growth be accommodated and would this have reduced the impact of growth proposed elsewhere in the District?

4. As identified, it is a key part of the case of LTC that a higher level of growth could be accommodated at the Garden Communities. The developers of the Garden

Community advise that it could accommodate up to around 2,500 homes ultimately, as opposed to the 1,000 identified in this Plan. This would accommodate growth in a more sustainable manner than 'cramming' development into existing built up areas. The Garden Community has sufficient capacity to absorb the 154 homes identified to be located at Jessel Green.

5. There would be no additional impact as a result of this increase at the Garden Community, but it would significantly reduce the impact of the development were it to occur at Jessel Green, where the impact of the development in this location would result in:
 - Loss of vital green space in an area which already suffers from a lack of green space and open areas.
 - Impact on the community through pressure on infrastructure, including roads and transport.

6. This would therefore be in accordance with paragraph 157 of the NPPF, which states: *"Crucially, Local Plans should ... allocate sites to promote development and flexible use of land, bringing forward new land where necessary, and provide detail on form, scale, access and quantum of development where appropriate"* and *"identify land where development would be inappropriate, for instance because of its environmental or historic significance"* as is the case at Jessel Green.

7. Paragraph 152 of the NPPF includes the following overarching policy advice: *"Local planning authorities should seek opportunities to achieve each of the economic, social and environmental dimensions of sustainable development and net gains across all three. Significant adverse impacts on any of these dimensions should be avoided and, wherever possible, alternative options which reduce or eliminate such impacts should be pursued."* The impact of development at Jessel Green would impact sustainability, whereas the inclusion of the same number of units at the Garden Community would not have the same or any impact on the sustainability of that area.

8. ARUP, in the Site Selection process document, made unrealistic assumptions in relation to the capacity of sites, due at least in part to the high level of detail at which these assessments were undertaken. For example, car parking standards would be refined at a more detailed level at the time of any planning application, thereby possibly revealing increased capacity on some sites. The update in 2017 appeared to reduce the capacity of sites in this context. However it is still considered that capacity is likely to be further refined through a more detailed masterplanning of sites in due course. Capacity should be reviewed throughout the Plan period to ensure best use is made of land on these sites.

9. The Plan assumes that little growth will occur in the planned Garden Communities in the early part of the Plan period (in a gap which will be filled by smaller sites coming forward) (Local Plan paragraph 2.62). Where these smaller sites cannot come forward for other reasons early in the Plan period, this should be monitored and the potential considered to include the capacity of these sites in the Garden Community, where it would be a more sustainable pattern of growth in the longer term.

ISSUE 2

Question 1

What are the key factors which informed the distribution of development in the Plan beyond the Harlow area?

10. Inadequate consideration was given in the Plan preparation process as to the impact of the distribution of growth in different scenarios.

11. The Plan has been constrained in the areas beyond Harlow as a result of the Epping Forest designation and also the perceived stress on areas of special conservation. Whilst this is recognised as an important constraint, consideration should have been

given to the alternative locations for growth which would then not have other impacts, for example on the Forest at Loughton.

12. Fundamentally the soundness of the Plan has been called into question in terms of the allocation of sites in the context of the availability of Appendix B of the Arup Site Selection Report, which became further relevant following 2 ECJ judgements.¹ The outcome of this was that development should be directed away from the forest, which includes Loughton, in order to reduce the stress of development in this area. There is therefore a case that the preparation of the Plan should have included further consideration of the areas to the North East of the District and around Ongar.

13. The ARUP Report (EB801) identifies at page 16, in relation to the site assessment methodology that; *“The total number of sites identified as potentially suitable for allocation (26,447 units) far exceeds the housing need figure to be met through site allocations away from Harlow (4,450 units plus reserve sites). Therefore a decision needed to be made about how many residential units should be taken forward for testing and the distribution of those residential units across the District.”* The assessment of these sites was then categorised under 7 categories, which appear to have been primarily defined on the basis of their Flood Risk or Green Belt status, as opposed to other more detailed matters.

14. It was also suggested in the report that sites did not need to be designated at this stage, but could have been left as areas for growth, but that the decision was made to allocate sites in a more detailed manner, stating; *“In addition, paragraph 4.29 of the SSM requires that consideration be given to as to whether broad locations (rather than site allocations) should be identified to deliver planned development in the latter stages of the Plan period. Given the large number of sites identified as potentially suitable for development it was agreed that site allocations should be identified to meet the District’s housing needs for the whole Plan period.”* (page 16,

¹ See **Appendix A** regarding *People Over Wind & Sweetman v Coillte Teorante* [2018] Env LR 31 and *Grace v An Bord Pleanala* [2018] Env LR 37 on **page 11**.

ARUP Report EB801). It is not clear why this is necessary, particularly while key matters such as infrastructure delivery are uncertain.

15. The Plan identifies the objective of delivering smaller sites first (paragraph 2.57) on the basis that these can assist in meeting the short-term shortfall, and that since they can be delivered with less associated infrastructure requirements and therefore more quickly than larger sites. This is not a long-term sustainable approach to growth, as the cumulative delivery of these smaller sites will themselves have impact on infrastructure, for example in Loughton through the delivery of Jessel Green.

Question 2

How was the settlement hierarchy set out in Table 5.1 page 114 defined, and is it justified?

16. The Settlement Hierarchy itself is justified, but it is not considered that the resulting level of growth in these settlements was informed by the constraints therein, as set out below.

Has the settlement hierarchy informed the distribution of development and if not, what is its purpose?

17. The ARUP Site Selection Report identifies that the distribution of development was informed as follows: *“In terms of distribution of residential development across the District, feedback from the Community Choices consultation and other stakeholders had indicated that:*
 - *growth should be spread across the District rather than focussed in specific settlements;*
 - *development potential within existing settlements should be maximised, focusing on brownfield land with higher densities where possible, before releasing land in the Green Belt;*
 - *opportunities for growth of North Weald Bassett should be maximised and;*
 - *development proposals should support the realisation of the emerging settlement visions.*

18. The updated ARUP Report 2017, states at Page 17, that *“Following a review of the representations received to the Draft Local Plan consultation, the Council continues to believe that the Local Plan Strategy it consulted upon remains the most appropriate strategy for accommodating growth in the District over the Plan period.”* This suggests that responses to consultation on balance supported the Local Plan strategy, but fails to take into account the breadth of more detailed comments submitted in this regard.
19. It goes on to state that; *“It was therefore agreed that all sites located within categories 1 to 4 for all settlements should be taken forward for more detailed testing to allow for a distributed pattern of growth across the District.”*
20. It is not clear how this distributed pattern of growth became the preferred strategy in the context of the above and earlier assessment of sites.
21. The document identifies in terms of the sites assessed *“In total these sites have a capacity of 6,322, which was not considered to provide a sufficient buffer given the additional assessment that would be undertaken. Also, some settlements had none or very little land located within the first four categories and it was felt that more sites needed to be put forward for testing in these locations in order to support a distributed pattern of growth across the District and realisation of the emerging settlement visions. Therefore, all sites located in Green Belt adjacent to the settlement (whether that be land of greater value or most value to the Green Belt) within the following settlements were identified for further testing.”*
22. Again, further sites seem then to have been identified and included in the pool for consideration, without clarity as to how these relate to the wider strategy. There is a lack of consistency in this process and in the response to the community consultation.
23. The SA (EB204 Page 9) noted that in the Community Consultation process 2010/2011, 32.4% of people identified their prioritising the protection of green spaces.
24. At 5.10, the SA goes on to state that; [whilst it has a good range of services and facilities] *“Loughton, is also one the most constrained and at the time only had identified capacity for a small number of dwellings....It was therefore necessary to amend the proportionate distribution pattern to reflect this.”*

25. Notwithstanding this extent of constraint, Loughton has still been allocated the second highest level of growth outside of the Garden Villages. This is neither appropriate nor proportionate and whilst it reflects the settlement hierarchy, the hierarchy has not been used to suitably inform the distribution of growth.

ISSUE 6

Transport

Is the distribution of development justified in respect of its effect on transport and other infrastructure in the District?

Generally

26. The delivery of the Garden Communities are reliant on the delivery of commensurate infrastructure, the delivery of which will impact the timing of the delivery of these areas. However, having delivered the necessary infrastructure, the Garden Communities will be sustainable locations for growth, supported by the necessary infrastructure.

27. Loughton is identified as being constrained for new development, infrastructure being a key reason for this. However, it remains the location for a significant proportion of the growth in the Plan outside of the Garden Communities. It is not an area or location where the infrastructure, particularly transport infrastructure can be upgraded, due to constraints in terms of land take required in the Forest areas and capacity constraints on the Central Line. The distribution of development and weight of development at Loughton, where there is a known infrastructure constraint is not therefore justified.

Will the Plan be effective in securing the infrastructure necessary to support the proposed growth?

Generally

28. LTC has significant concerns as to the effect of the proposed development on transport and other infrastructure.

29. Transport has historically been primarily reliant on the Central Line and the road system. The Forest and the extent of crossings available are constraints to the road system in this area, which cannot be overcome.
30. There are also specific concerns in relation to the substantial improvements required to junctions within Epping Forest land, where land take is restricted, at:
- The A121-A104-B1393-B172 Wake Arms roundabout
 - The A1168/Wellfields/Pyrles Lane staggered junction.
31. The Infrastructure Delivery Plan identifies 12 infrastructure improvements for Loughton, all in the period 2021-2026 and funded jointly by Essex County Council (ECC) and developer funding. 10 of these 12 improvements are estimated at £2-3m each. There is no clarity or certainty as to the realisation of these sums or the split in funding between ECC and developer funding. The timing also suggests the provision of a significant extent of infrastructure in a short timescale.
32. It is intended by the Plan that smaller sites 'plug the gap' of housing delivery in advance of the Garden Communities, which are anticipated to come forward later due to the extent of infrastructure required for their delivery. This IDP suggests that there is still a significant extent of infrastructure improvement required to deliver even these smaller sites, particularly around Loughton.
33. Overall therefore there remains uncertainty as to the delivery and timing of delivery of the development in Loughton, particularly in the context of the extent of infrastructure required to achieve this.
34. There is a history of proposals to improve Junction 5 of the M11, which have not been implemented in the past. The County Council had previously been required to make improvements to this junction as a result of the extent of accidents occurring in this area. Land was safeguarded for this, but the planned improvement has subsequently been constrained by other development permitted in this area (for example the Epping Forest Shopping Park).
35. The level of safety at this junction in particular and the extent of improvements which can and are intended to be made to it in the Plan period are inadequate. As such, this area of the M11 remains a constraint to development in the Plan period.

Question 1

Have the transport impacts of the Plan as a whole been tested? Has all necessary mitigation been identified and is there confidence that it can be delivered in time to support the proposed growth?

Are there any remaining uncertainties or shortcomings?

36. Yes, there are shortcomings in the assessment of the transport system and in the system itself to deliver and sustain the growth identified in this Plan. The main means of travel in the area is by car and the Central Line. We have set out concerns in relation to the road network, above.

37. The Central Line is constrained by loading capacity, platform length, signalling and the rolling stock. In the preparation of the Plan, there appears to have been an assessment of sections of the Central Line, but not of the whole line and the extent of congestion which will occur as a result of the planned development.

38. LTC suggests that there would be congestion on the line, particularly in the section Leyton to Stratford, as a result of the proposed development.

39. There will also be impact on a number of existing road junctions as a result of the proposed development, which are already under pressure and experience congestion in the current pre-growth scenario. There are neither adequate mitigation measures in place, nor certainty as to the timing of measures to ensure that the junctions will function appropriately during and after this Plan period. This particularly includes junctions at:

- The A1069, Rangers Road
- The A1168, Rectory Lane (which is intended to be made single carriageway).

Question 2

Is planned growth dependant on a step change towards sustainable travel? What does this mean and will the plan facilitate it? What has been done to assess the need for increased public transport and how will this be provided? Will success be monitored?

40. The Plan assumes that there will be a step change towards sustainable travel and that this is required in order to facilitate the planned growth and development in the

Plan period. There is no certainty as to the extent of the step change which can and will be achieved and therefore no certainty as to whether the extent of journeys anticipated will be undertaken by public transport.

41. The representations prepared by LTC set out concerns in relation to bus services, and the extent of services available and the recent reductions in the level of service (including a reduction of 40% in 2017) on routes around the proposed site of development at Jessel Green (site R5). To make the Plan sound, there therefore needs to be a robust and clear strategy for the improvement of bus routes and incentivisation for their use.

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APPENDIX A

People Over Wind & Sweetman v Coillte Teoranta [2018] Env LR 31

This case concerned a request by an Irish Court to the ECJ for a preliminary ruling.

Facts

Coillte Teoranta, a company owned by the Irish State that operated in the forestry sector, proposed laying a cable connecting a wind farm to the electricity grid. The applicants submitted that river pollutants, such as silt and sediment, resulting from the laying of the connection cable would have a harmful effect on the Nore pearl mussel, a species found in Annex II of the Habitats Directive. Coillte, on the other hand, argued that, if the project did require an appropriate assessment to be undertaken (a matter at issue in the proceedings) its consultants had concluded that one was not required based on the protective measures referred to in the screening report. In that context, the referring court asked whether, or in what circumstances, mitigation measures could be considered when carrying out screening for appropriate assessment under Article 6(3) of the Habitats Directive.

Ruling

The Court answered in the negative the question to which it was referred.

It noted (at paragraphs 25 & 26) that Article 6 contains no reference to any concept of 'mitigating measure'. The measures referred to as 'mitigating measures', were better understood as denoting measures intended to avoid or reduce the harmful effects of the envisaged project on the site concerned.

It reiterated that Article 6 envisaged a two-stage process, namely a screening stage followed, if necessary, by the appropriate assessment stage.

The Court then turned specifically to consider the question posed:

“35 As the applicants in the main proceedings and the Commission submit, the fact that... measures intended to avoid or reduce the harmful effects of a plan or project on the site concerned are taken into consideration when determining whether it is necessary to carry

out an appropriate assessment presupposes that it is likely that the site is affected significantly and that, consequently, such an assessment should be carried out.

36 That conclusion is supported by the fact that a full and precise analysis of the measures capable of avoiding or reducing any significant effects on the site concerned must be carried out not at the screening stage, but specifically at the stage of the appropriate assessment.

37 Taking account of such measures at the screening stage would be liable to compromise the practical effect of the Habitats Directive in general, and the assessment stage in particular, as the latter stage would be deprived of its purpose and there would be a risk of circumvention of that stage, which constitutes, however, an essential safeguard provided for by the directive.”

Grace v An Bord Pleanála [2018 Env LR 37

This was another case concerning a request by an Irish Court to the ECJ for a preliminary ruling.

Facts

Proceedings between the applicants and An Bord Pleanála (National Planning Appeals Board) concerned a decision by the latter to grant permission for a wind farm project in a SPA which hosted the natural habitat of the hen harrier, a protected bird species. It was accepted that the proposed development would result in the complete loss of 162.7 hectares of foraging habitat. However, the developers proposed in summary the following measures: that three currently planted areas would be restored to blanket bog; that during the lifetime of the development, part of second rotation forest would be subjected to 'sensitive' management, namely felling and replacing the current closed canopy forest so as to ensure that there would be substantial areas of perpetually open canopy forest to provide suitable foraging habitat for the hen harrier; and that construction works would generally be confined to times outside the main hen harrier breeding season.

The Irish planning board granted permission for the project partly because it considered that the measures proposed by the developers would mean that the proposed development would not adversely affect the integrity of the site.

The applicants argued that the board should have concluded that the contested development and its related management plan entailed compensatory measures and,

accordingly, that it should have taken account of the criteria laid down in Article 6 (4) of the Habitats Directive when carrying out its assessment.

The referring court's question was whether Article 6 of the Habitats Directive must be interpreted as meaning that, where it is intended to carry out a project on a site designated for the protection and conservation of a certain species, of which the area suitable for providing for the needs of that species fluctuates over time, and the temporary or permanent effect of that project will be that some parts of the site will no longer be able to provide a suitable habitat for that species, the fact that the project includes measures to ensure that, after an appropriate assessment of the implications of the project has been carried out and throughout the lifetime of the project, the part of the site that is in fact likely to provide a suitable habitat will not be reduced, and indeed may be enhanced, may be taken into account for the purpose of the appropriate assessment, or whether that fact falls to be considered, if need be, under Article 6(4) of the directive.

Ruling

The ECJ answered the referred question, which was fairly case specific in its terms, that the measures referred to fall to be considered under Article 6 (4). However, the Court made some interesting observations.

First, in order for the integrity of a site not to be adversely affected, the site needs to be preserved at favourable conservation status. That entails the lasting preservation of the site's constitutive characteristics that are connected to the presence of a natural habitat type whose preservation was the objective justifying the designation of that site (paragraph 34, underlining added).

Second, the appropriate assessment may not have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works on the protected area concerned (paragraph 39).

Third, the material date is the date of adoption of the decision authorising implementation of the project or, we would suggest, of the plan (paragraph 41).

Fourth, there is a distinction to be drawn between protective measures forming part of a project and intended to avoid or reduce any direct adverse effects that may be caused by the project in order to ensure that the project does not adversely affect the integrity of the area, which are covered by Article 6(3), and measures which, in accordance with Article 6(4), are aimed at compensating for the negative effects of the project on a protected area and cannot be taken into account in the assessment of the implications of the project (paragraph 47).

Fifth, a measure, provided for in a project and aimed at compensating for the negative effects of that project, may only be taken into consideration in the appropriate assessment, when it is sufficiently certain that such a measure will make an effective contribution to avoiding harm and will guarantee beyond all reasonable doubt that the project will not adversely affect the integrity of the area (paragraph 51).

Finally, the Court was concerned in the instant case about the inclusion in the assessment of the implications of future benefits to be derived from the adoption of measures which, at the time that assessment was made, were only potential, as the measures had not been implemented. *“... it was not possible for those benefits to be foreseen with the requisite degree of certainty when the authorities approved the contested development.”* (paragraph 53).

22.01.19