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Part 2 - Regulation 19 and 20 Town and Country Planning (Local Planning) (England) Regulations 2012 "Pre-Submission LDP" consultation

Please note that all comments on the Pre-Submission LDP consultation should be provided by completing Part 2 of this form. A separate completed Part 2 should be provided for each comment made within a representation.

2.1. To which part of the Maldon District Pre-Submission Local Development Plan (LDP) does this representation relate?

- | | | |
|---|--|-----------|
| a. Paragraph
(please specify paragraph number) _____ | b. Policy
(please specify policy reference) _____ | Policy N2 |
| c. Proposals Map _____ | d. Other section
(please specify) _____ | |

2.2. Do you consider the Maldon District Pre-Submission LDP to be (tick as appropriate):

- a. Legally compliant** Yes ☐
To be 'legally compliant' the LDP has to be prepared in accordance with the Duty to Co-operate and legal and procedural requirements. This is required by Government guidance No ☐
- b. Sound** Yes ☐
To be 'sound' a Local Plan should be positively prepared, justified, effective and consistent with national policy. This is required by Government guidance No ☐
(if you **do not consider the LDP to be sound**, please complete section 2.3. below)

2.3. Do you consider the Maldon District LDP to be unsound because it is not (tick as appropriate):

- a. Positively prepared** ☐
To be positively prepared the plan should be prepared on a strategy which seeks to meet objectively assessed development and infrastructure requirements
- b. Justified** ☐
To be justified the plan must be:
- Founded on a robust and credible evidence base;
 - The most appropriate strategy when considered against the reasonable alternatives.
- c. Effective** ☐
To be effective the plan must be:
- Deliverable;
 - Flexible;
 - Able to be monitored.
- d. Consistent with National Policy** ☒
The Plan must be consistent with Government guidance as set out within the National Planning Policy Framework

On the following pages, please explain why you think the Plan is unsound or not legally compliant, and set out any changes you feel should be made to the Plan to make the Plan sound or legally compliant.

Please note: As there will not normally be a subsequent opportunity to make further representations based on your representation at this stage, please include all the information, evidence and supporting information necessary to support/justify your representation and the suggested change(s) to the Plan. After this stage, further submissions will only be invited at the request of the Planning Inspector, based on the matters and issues the Inspector identifies for examination.

2.4. If you consider the Maldon District LDP to be unsound or not legally compliant please explain why in the box below.

Please be as precise as possible. Please also use this space for any comments in support of the LDP.

Essex County Council recommends that the wording in Policy N2 should be amended to more accurately reflect the guidance on biodiversity, as outlined in the NPPF, paragraph 117.

As worded this policy does not accurately reflect national biodiversity conservation policy. Technical amendments are needed with updated references to 'local ecological networks' and 'priority habitats' and 'priority species' in accordance with current national planning policies.

The County Council recommends that the wording should be amended to more accurately reflect current national biodiversity conservation policy as expressed in the Governments Natural Environment White Paper and Biodiversity Strategy for England ('Biodiversity 2020: A strategy for England's wildlife and ecosystem services'). The NPPF incorporates many of the key points from these publications that are relevant to the local planning system and encourages Local Planning Authorities to address them when developing Local Plans.

A greater focus should be given to Local Sites, Biodiversity Offsetting, Priority Habitats and Priority Species. To assist the District Council ensure greater conformity with the biodiversity elements of the NPPF, a short paper which has recently been produced by Place Service Ecologists with support from Natural England has been attached to this representation. It sets-out recommended policy wording encompassing a number of biodiversity matters that are capable of being a material consideration.

Finally, the interrelationship between Priority Habitats and Species; the Natural Environmental Rural Communities Act 2006 and the UK and Local Biodiversity Action Plans could be clearer in the proposed Local Plan text. This is a common issue, and the Chartered Institute for Ecology and Environmental Management have provided the following guidance below to assist policy planners.

In recent years there has been some confusion and uncertainty over the use of Biodiversity Action Plan (BAP) list as a material planning consideration in England. The uncertainty has arisen as a consequence of the publication of Biodiversity 2020: A strategy for England's wildlife and ecosystem services (2011) to replace the previous England Biodiversity Strategy, coupled with the replacement of the UK BAP itself with the UK Post-2010 Biodiversity Framework (2012). Biodiversity issues are now devolved. These new strategies and framework resulted in changes in the terminology used to describe priority habitats and species in England.

Previous planning policy (and some supporting guidance which is still current, eg ODPM Circular 06/2005, now under revision), refers to UK BAP species as being a material consideration in the planning process. Equally many local plans refer to BAP priority habitats and species. Both remain as material considerations in the planning process but such habitats and species are now described as Species and Habitats of Principal Importance for Conservation in England, or simply priority habitats and priority species. The list of habitats and species remains unchanged and is still derived from Section 41 list of the Natural Environmental and Rural Communities (NERC) Act 2006. As was previously the case when it was a BAP priority species hen harrier continues to be regarded as a priority species although it does not appear on the Section 41 list. So the same species and habitats are of material consideration for planning purposes as previously was the case, they are just referenced using different terminology.

Given the relatively recent nature of these changes you will still see references in local plans and some Government or Government agency documents and circulars to BAP habitats and species. As stated above these same habitats and species remain material considerations in planning albeit they are now referred to either as habitats and species of principal importance or simply priority

habitats and priority species.

<http://www.naturalengland.org.uk/ourwork/conservation/biodiversity/protectandmanage/habsandspeciesimportance.aspx>

2.5. Please explain in the box below what change(s) you consider necessary to make the Maldon District LDP legally compliant and sound.

Please be as precise as possible. Please explain why this change will make the Maldon District LDP legally compliant and sound. It will be helpful if you are able to put forward any suggested revised wording of the policies or supporting text.

ECC recommends the following changes be made to Policy N2 to be consistent with the NPPF.

Paragraph 2, sentence 2 – amend to read

‘Any development which could have an adverse effect on sites with designated features, priority habitats and/or protected or priority species, either individually or cumulatively, will require an assessment as required by the relevant legislation or national planning guidance’

Mitigation Measures – amend last sentence to read

‘Any compensatory habitat created should be ecologically functional in advance of the loss, and located to ensure a positive contribution to the local ecological network.’

Amend 2nd paragraph to read

‘If any protected species and/or priority habitats/species or.....’

Amend Point 1 to read

1) *There is no net loss of habitats in terms of quantity, quality and connectivity to the local ecological network; and*

2.6. Do you consider it necessary to attend and give evidence at the hearing part of the examination? (tick as appropriate)

No, I wish to communicate through written representations ☒

Yes, I wish to speak to the Inspector at the hearing sessions ☐

Please note: The Inspector will determine the most appropriate procedure to hear those who have indicated that they wish to participate at the hearing part of the examination

2.7. If you wish to participate at the hearing part of the examination, please outline why you consider this to be necessary.

This is the end of Part 2 (Regulation 19 and 20) of the response form. Please complete this form for each representation you wish to make. You only need to complete Part A once. Please submit all of your response forms together.

Recommended Policy Wording for Local Plans

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Introduction

The following policies contain recommended wording for development management policies in Local Plans. They will assist the local authority to meet their obligations under Section 11 of the National Planning Policy Framework (NPPF) and achieve no net loss of biodiversity (**paragraph 9**). They cover every aspect of ecology that must be considered in the development management process.

The policies reflect the criteria-based and hierarchical approach that should be taken to protect wildlife sites, as required under **paragraph 113** of the NPPF. They reflect the need to plan positively for the creation, protection, enhancement and management of networks of biodiversity and green infrastructure required under **paragraph 114**. They meet the requirements for planning policies set out in **paragraph 117** and those for determination in **paragraph 118**.

Each recommended policy can be tailored to the specific Local Planning Authority. The policies can be kept separate, or similar policies (for example, for priority habitats and species) could be combined. Each policy should be accompanied by Supporting Text prepared by the local authority, explaining the need for the policy, any relevant legislation or national policy, and any species, habitats, features or local designations of particular importance to the local authority that may need specific consideration.

Recommended Policies

Legally Protected Sites and Irreplaceable Habitats

Proposals likely to have an adverse effect on Special Protection Areas (SPAs), Special Areas of Conservation (SACs) and Ramsar sites as shown on [Map X], will require a full assessment in line with European legislation. Development proposals affecting Sites of Special Scientific Interest (SSSIs) and National Nature Reserves (NNR) as shown on [Map X] and irreplaceable habitats should be controlled through avoidance, on-site management and on-site mitigation. Where this cannot be achieved development proposals will not be permitted.

The Council will take a precautionary approach where insufficient information is provided about avoidance, management and mitigation measures. The Council will secure management, mitigation and enhancement through planning conditions/obligations where necessary.

Local Sites

Proposals likely to have an adverse effect on a Local Wildlife Site (LoWS), Local Nature Reserve (LNR), Special Roadside Verge or a site that satisfies the relevant designation criteria will not be permitted unless the benefits of the development clearly outweigh the harm to the nature conservation value of the site. If such benefits exist, the developer will be required to demonstrate that impacts will be avoided, and impacts that cannot be avoided will be mitigated on-site. Where residual impacts remain, off-site compensation will be required to achieve no net loss of biodiversity in [X District/Borough].

The Council will assess sites proposed for development to ascertain whether they fulfil the criteria for designation and may request information from applicants to assist in that process. If a site satisfies the criteria it will, for planning purposes, be treated as if it were a LoWS/LNR.

The Council will take a precautionary approach where insufficient information is provided about avoidance, management, mitigation and compensation measures. The Council will secure management, mitigation and compensation measures through planning conditions/obligations where necessary.

Priority Habitats and Hedgerows

Proposals that result in a net gain in Priority Habitat will in principle be supported, subject to other policies in this plan. Where Priority Habitats are likely to be adversely impacted by the proposal, the developer must demonstrate that adverse impacts will be avoided, and impacts that cannot be avoided are mitigated on-site. Where residual impacts remain, off-site compensation will be required so that there is no net loss in quantity and quality of Priority habitat in [X District/Borough].

Hedgerows must be subjected to an assessment against the criteria of the Hedgerow Regulations 1997. If a Hedgerow is deemed to be Important under the Hedgerow Regulations, the developer must demonstrate that adverse impacts upon the Important hedgerow will be avoided, and impacts that cannot be avoided are mitigated on-site.

The Council will take a precautionary approach where insufficient information is provided about avoidance, mitigation and compensation measures. The Council will secure mitigation and compensation through planning conditions/obligations where necessary.

Legally Protected Species

Where there is a confirmed presence, or reasonable likelihood, of a legally protected species on an application site, the applicant will be required to demonstrate that adverse impacts upon the species have been avoided, and where they cannot be avoided adequately mitigated. Mitigation must conform to the requirements of relevant legislation and Natural England Standing Advice. Where impacts cannot be adequately mitigated, the proposal will not be permitted.

The Council will take a precautionary approach where insufficient information is provided about avoidance and mitigation measures. The Council will secure mitigation through planning conditions/obligations where necessary.

Priority Species

Where there is a confirmed presence or reasonable likelihood of Priority species being present on a development site, the developer will be required to demonstrate that an adequate mitigation plan is in place to ensure there is no net loss of Priority species.

The Council will take a precautionary approach where insufficient information is provided about mitigation measures. The Council will secure mitigation through planning conditions/obligations where necessary.

NIA – For Local Authorities wholly or partly within the boundary of the Greater Thames Marshes Nature Improvement Area

The Greater Thames Marshes Nature Improvement Area aims to increase the quantity, quality and extent of target Priority habitats to benefit focal species, improve the local ecological network, and increase engagement with the local natural environment.

Proposals that contribute to the aims, objectives and targets of the Greater Thames Marshes Nature Improvement Area will in principle be supported, subject to other policies in this plan. Development likely to have an adverse impact on the aims and objectives of the NIA will not be permitted.

Biodiversity Offsetting

In order to achieve no net loss of biodiversity the Council expects that the Defra Biodiversity Offsetting metric will be used to quantify the impacts of all development proposals upon habitats in ‘credits’.

Where residual impacts are calculated to remain after the application of on-site mitigation, Biodiversity Offsetting should be used to deliver the required compensation. The use of Biodiversity Offsetting will be secured through planning obligations where necessary.

Green Infrastructure and Ecological Network

Development proposals will be required to maximise opportunities for the creation, restoration, enhancement, expansion and connection of Green Infrastructure and connection of the development site to the local Ecological Network. All Major development proposals should seek to include elements of Green Infrastructure and Ecological Networks, such as but not limited to SuDS, allotments, street trees, green roofs, recreational areas, areas of new and existing natural habitat, green corridors through the site and waterbodies. Where this is not possible, financial contributions to facilitate improvements to the quality and extent of existing Green Infrastructure in [X District/Borough] will be sought.

Living Landscapes

The extents of the Living Landscapes in [X District/Borough] are identified on [Map X], these are:

- ...
- ...
- ...

Within each Living Landscape, opportunities for the preservation, restoration and re-creation of priority habitats, ecological networks and populations of priority species will be supported in order to protect and enhance strategic wildlife corridors and habitats in Essex. Development proposals that would deliver these opportunities will in principle be supported, subject to other policies within this plan. Development resulting in a significant adverse impact on the ecological function of these Living Landscapes will be refused.