

Our ref Pre-Submission LDP Representation
Your ref

17 March 2014

0154-5305-S2-124
**MALDON DISTRICT
COUNCIL**

Princes Road
Maldon
Essex CM9 5DL



Enquiries to: Planning Policy
Email: policy@maldon.gov.uk

Dear Sir / Madam

Nathaniel Lichfield & Partners on behalf of Linden Homes representation to the Pre-Submission Local Development Plan public consultation

The information contained within the representations listed below were made by Mr Daniel Lampard, of Nathaniel Lichfield and Partners representing Linden Homes and should be read in conjunction with the supporting evidence contained within representation: **0154-5305-S2-124**.

- 0154-5306-S4-124
- 0154-5307-S4-234
- 0154-5308-H1-24
- 0154-5309-E1-2
- 0154-5310-N2-4

Kind regards,



Planning Technician



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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) | 2.37 | b. Policy
(please specify policy reference) | S2/S2(c) |
| 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.

See submitted letter under "Policy S2 Strategic Growth" subheading.

- 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.

See submitted letter under “Policy S2 Strategic Growth” subheading

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.

Linden Homes wish to amplify their concerns and test MDC's assumptions in the context of the LDP Hearing

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.



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Date 12 March 2014
Our ref 12865/DL/6390568v2
Your ref

Dear Sir or Madam

**Maldon District Local Development Plan (LDP) Pre-Submission Draft:
Representations on behalf of Linden Homes in respect of Site S2(c) - Wycke Hill
(South) Site**

We write on behalf of our clients, Linden Homes, regarding the Pre Submission Draft Local Development Plan. These representations focus on their proposed residential development on land at Wycke Hill (South) (Site S2(c)) within emerging policy S2).

This letter sets out the background to the proposed residential development of site S2(c) and is accompanied by the Local Development Plan (LDP) representation forms (published by MDC) in respect of each part of the LDP that Linden Homes wish to comment on.

Overview of Proposed Residential Development on Sites 2(c)

Linden Homes has promoted residential development on this site for some time, and the principle of residential development in this location is accepted by MDC. This is reflected in the sites allocation for residential development throughout the emerging LDP process.

NLP submitted representations on behalf of Linden Homes to the Maldon Local Development Plan (LDP) (Preferred Options Consultation – July 2012) and the LDP Public Consultation Draft (August 2013). Whilst these representations supported the proposed residential allocation on Site S2(c) a number of the concerns raised by Linden Homes in their earlier representations remain (and indeed have been amplified by the subsequent reduction in the number of units proposed for allocation both on site S2(c) and more generally within the South Maldon Garden Suburb (SMGS) Area). Linden Homes reserve their position to seek to amplify their concerns regarding the emerging LDP through the subsequent LDP Inquiry process.

Linden Homes have also submitted an outline planning application (with all matters reserved except for access) seeking the redevelopment of the site to provide up to 120 homes and associated works (LPA ref. OUT/MAL/13/00763). Maldon District Council (MDC) has refused this application (under delegated powers) and this is now the subject of an outstanding appeal (the



appeal application) which is anticipated to be determined in Summer 2014. Whilst MDC have refused planning permission they accept within the Officer Report that *"the principle for housing development has been accepted"* on this site.

Notwithstanding their concerns about the potential timing implications (which we expand upon below) arising from Maldon District Council's (MDC's) proposals for a Masterplan for the South of Maldon Garden Suburb (the SMGS Masterplan), Linden Homes has fully engaged with this process. On Thursday 3rd October 2013 they submitted a Statement of Agreement to the draft South of Maldon Masterplan Brief which has been agreed between Linden Homes and the two other parties with a land interest in this area (sites S2(a) and (S2b)) – Commercial Estates Group (CEG) and Dartmouth Park Estates (DPE). More recently they have attended a series of meetings and workshops, most recently the public consultation event held in March 2014.

Linden Homes welcome the opportunity to comment on the latest version of the LDP. MDC's first objective for the LDP's spatial vision is *"to provide sufficient, well designed, quality housing to meet our housing needs, increase the supply of affordable housing across the District and focus future development in sustainable locations, within settlement boundaries, garden suburbs and strategic allocations."* Site S2(c) is clearly well placed to assist in meeting this objective and the emerging LDP recognises this by allocating it for residential development within the first five years of the LDP. This is consistent with the conclusions reached by MDC in their determination of the appeal application where MDC concluded the principle for residential development on the site had been accepted.

There is a clearly recognised need for the provision of further residential development within Maldon. The MDC Annual Monitoring Report (March 2013) identifies (table 5.4) just 300 deliverable residential units, which on the basis of the MDC's own assessment of housing need (which we comment on below) results in just one year and one week's housing land supply. Not surprisingly the Planning Inspector in the recent Oval Park appeal (24 July 2013) concluded (para 41) that there was a *"pressing need for housing development"* within the District.

As we expand upon below it is important that the emerging LDP does not, inadvertently or otherwise, risk delaying residential development in a sustainable location which both the LDP itself, and MDC more widely, recognise is appropriate in assisting to meet this clear housing need. The SMGS Masterplan has progressed substantially since both the August 2013 Draft LDP and the refusal of the appeal application (November 2013). It is of critical importance that the residential development proposed on the Site S2(c), which is capable of delivery in the short term, is not delayed any further by the LDP process (and / or associated SMGS Masterplan). The site's location and proposed use is compliant with the draft LDP but capable of delivery outside of the LDP / masterplan process, without fettering the subsequent development of the wider area.

Any further delay in bringing forward residential development on land which MDC are themselves promoting as appropriate for residential development would not only be perverse but contrary to the NPPF – (para 15) that *"policies in Local Plans should follow the approach of the presumption in favour of sustainable development so that it is clear that development which is sustainable can be approved without delay."*



Emerging Local Development Plan: Scope of Representations

Our comments below focus on the allocation of the Site S2(c) and the wider SMGS area, the size of the residential allocation for site S2(c) and the timing implications arising from the emerging LDP. Where relevant we also comment on other development management policies.

Our representations have regard to guidance within the NPPF (para 182) that in assessing whether a Local Plan is “*sound*” it must be:

- Positively prepared
- Justified
- Effective; and
- Consistent with national policy

Policy S1 Sustainable Development

Linden Homes welcome the “*positive approach*” set out in policy S1 which supports sustainable development. They are concerned however that elements of this policy conflict with other aspects of the LDP (and we expand on this below).

Policy S2 Strategic Growth (See LDP Representation Part 2 (form 1))

Housing Need

The emerging LDP identifies an annual housing target of 294 dwellings (para 2.24). Linden Homes welcome the substantial increase from the earlier Regional Strategy (RS) target of 126 dwellings per annum which more closely reflects the clear housing need within the District. They are however concerned about the absence of transparency over the derivation of this figure (para 2.24) and also at the reference (Policy S1) of seeking to identify a level of housing need to meet “*local needs*” which differs sharply from the requirement in the NPPF (para 14) to meet “*objectively assessed needs*.”

These concerns lead them to conclude that there is no evidence that the figure of 294 dwellings per year in the draft LDP (para 2.24) equates with objective assessment of housing need and such an exercise would increase this figure further. This reflects the fact that the Strategic Housing Market Assessment (SHMA) identifies an overall total demand for 687 units and 242 affordable units per year (LDP para 2.22).

Linden Homes also disagree with the statement in the LDP (para. 2.37) which suggests that the District does not have a persistent under delivery of housing. This is simply inconsistent with the facts that;

- i MDC, on the basis of their own figures in the AMR, has a housing land supply of just one year;
- ii MDC has not met its' (much lower) annual target since 2008/9; and
- iii the 12 month period 2010/2011 year saw the development of just 36 residential units.



The statement within the LDP is also inconsistent with the observations of the Oval Park Planning Inspector (summarised above). Instead the available evidence is indeed consistent with a record of *"persistent under delivery"* and in accordance with the NPPF (para. 47), a 20% buffer should be applied to the identification of a five year housing land supply.

Linden Homes Site (site S2(c))

The Policy S2(c) allocation for residential development on the Wycke Hill (South) to be delivered in 0-5 years is strongly supported by Linden Homes.

Reduction in Residential Allocation

In this context however, where a test of the LDP's soundness is whether it has been *"positively prepared"* Linden Homes are very concerned about the proposed reduction in the identification yield of the site from 120 units to 75 units. This reduction is in a context where the overall housing yield within the SGMS area is proposed to be reduced from 1,710 dwellings to 1,375 dwellings (and a corresponding increase made in the proposed residential yield within the Heybridge Garden Suburb Area).

Such a major reallocation of units (from the South Maldon to Heybridge) seemingly forms a *"last minute"* proposal by MDC Officers¹. The proposed reduction in the size of the residential allocation in respect of site S2(c) and the SMGS generally is not consistent with the Maldon Local Development Plan (LDP) evidence base which has underpinned the process to date, and is also not supported by appropriate subsequent evidence. It is therefore not *"justified."*

Irrespective of the concerns about the ability for the Heybridge Garden suburb to accommodate a further 335 dwellings (not all of which appear to be appropriately addressed within the MDC Officer Report (December 2013) proposing the revision) our specific concerns in respect of the reduced allocation for site S2(c) include;

- the significant reduction in the level of the residential allocation on Site S2(c) appears entirely arbitrary and conflicts with the SHLAA and other elements of the LDP evidence base. This site has been recognised by MDC Planning Policy Officers as forming a *"sustainable location"* and the appeal application submission has also demonstrated how the site is capable of accommodating 120 dwellings in an appropriate manner. A reduction in the allocation, particularly of the scale proposed, does not reflect either the specific circumstances of the site or comply with the NPPF requirement for LDP's to be *"positively prepared."*

¹ This is evidenced in the Committee Report for the Special Meeting of Maldon District Council (11 December 2013). This proposed a reduction in the size of the SMGS Allocation but not, at that stage, a corresponding reduction in the associated infrastructure requirement (arising from a lower population) within the corresponding draft policy S4.



- The viability analysis undertaken by MDC in proposing the reduced allocation is flawed. Along with other promoters within the SMGS area, Linden Homes were asked to provide a viability response based on the provision of 120 dwellings on site S2(c) (at a time where 1,710 dwellings were envisaged within the SMGS). At the time MDC proposed a reduction in the overall (and private) residential yield on the site, whilst potentially introducing significant CIL liabilities on proposed developments (December 2013), they did not undertake an assessment of viability on a site or scheme specific basis. Linden Homes assessment is that the draft LDP allocation renders residential development on this scale, and with these financial burdens, unviable. This analysis is also consistent with that submitted by CEG and DPE (March 2014), as promoters of Sites S2 (a) and S2 (b) that the proposed reduction in the housing numbers allocated across the strategic sites in the South Maldon Garden Suburb further compromises the viability of this key part of the Council's housing land supply. Linden Homes concur with the broad analysis and conclusions reached in this subsequent assessment; and
- MDC's assessment of appropriate density levels within Garden Suburbs is flawed. The emerging master planning process is leading to the clear conclusion that a range of densities will be suitable across the SMGS area. The appeal site, by virtue of its proximity to existing services and location in the inner core of the SMGS (away from the countryside edge) is clearly appropriate for development at a density at the higher end of the range across the SMGS area. MDC themselves acknowledge this in their assessment of the appeal application stating "*the preferred approach is therefore for the density of new developments to be design led whilst taking into account the location of the proposed development*".
- The appeal application submission demonstrates that 120 residential units can be accommodated appropriately on site S2(c).

For these reasons there is no basis for MDC to seek a lower level of residential development on site S2(c) than that within the earlier iterations of the LDP (and supported by the earlier accompanying evidence base). Such an approach would be entirely "*inconsistent with national planning policy*" on sustainable development, viability, affordable housing provision and density.

Importantly such an arbitrary reduction in the size of the housing allocation a site recognised as forming a sustainable location clearly fails to comply with the requirement for MDC to produce a plan which is "*positively prepared*" in this respect and this has implications for the overall soundness of the plan. The earlier allocation of 120 residential units on site S2(c) should be reinstated.

Embargo on Development Pre Masterplan – Paras 2.45 and 2.50 and Policy S4 (See LDP Representation Part 2 (form 2))

As the emerging LDP is relying on Site S2(c) to assist in meeting the supply of housing within the District within the initial 5 years of the LDP it is imperative that other elements of the LDP / proposed masterplan (see below) do not fetter it's development. Specifically the site is capable of being granted planning permission and developed ahead of the adoption of the LDP endorsement of the SGMS and associated masterplan.



Conversely a number of references within the supporting text (eg. paras. **2.45/2.50** and **Policy S4**) risk resulting in an embargo on development in Garden Suburb areas (and this is clear from the stance that MDC have taken in respect of the appeal application – despite such an approach being entirely inconsistent with National Planning Guidance regarding prematurity). Specifically the emerging LDP states (para 2.45) *“planning consent for each of the Garden Suburbs will only be granted by the Council if the proposals are in accordance with a masterplan which has been endorsed by the Council”*

This is inappropriate for a number of reasons. Firstly there is no suggestion within the NPPF (or National Planning Practice Guidance) that it is appropriate for a proposal that is in accordance with an emerging / adopted Local Plan to be refused planning permission on the basis that a forthcoming Masterplan / SPD has not been endorsed or adopted.

At a local level it is internally inconsistent with emerging LDP policy S1(3) which seeks to *“prioritise development on previously developed land and planned growth at the Garden Suburbs and Strategic Allocations”* and the stated intention of the Council to *“always work proactively with applicants jointly to find a solution which means that development proposals can be approved wherever possible.”* It is also internally inconsistent with policy H4 which states that *“development . . . will seek to optimise the use of land”*

At an earlier SMGS Masterplanning workshop (17th September 2013) the minutes reflect that Planning Officers agreed that applications coming forward within Garden Suburbs ahead of the LDP adoption *“would need to clearly demonstrate that they have **not fettered** the masterplanning process and would not undermine the emerging Draft LDP growth strategy”* (our emphasis) (source: ATLAS note of meeting).

This is considered to be a more appropriate test for inclusion within the LDP (and paras 2.45, 2.50 and policy S4 should be amended accordingly). Conversely the blanket *“embargo”* on development within the South of Maldon and Heybridge Garden Suburbs, in advance of an endorsement of a masterplan (which is inherent within Policy S4 and paras 2.45 and 2.50) risks further exacerbating the extremely poor housing delivery record of MDC. This part of the policy S4 and paras 2.45 and 2.50 should be amended as outlined above.

Policy S3 Place Shaping

This policy builds upon the anticipated residential delivery from the Linden Homes site (and other neighbouring sites) identified in Policy S2. In the light of our comments above it is important to recognise that many of these objectives are capable of being met through the development management process rather than a masterplan (with the latter route threatening to become unduly prescriptive).

Policy S4 Maldon and Heybridge Strategic Growth (See LDP Representation Part 2 (form 3))

The comments below are in addition to those above relating to the timeframe of development.

Within the supporting text the reference to archaeology assessments with para 2.61 is noted. To avoid such a requirement being regarded as unduly prescriptive the test should be amended to state that such a requirement is capable of being undertaken / controlled by planning condition (as



recognised in consultation response to the Linden Homes outline planning application - LPA ref. OUT/MAL/13/00763).

In relation to Para 2.63, concerning highways, the reference to a new relief road at land south of Maldon should be consistent with on-going ECC highways analysis. It is not needed to accommodate the initial stages of development in the strategic allocation and the LDP text should reflect this.

Policy E1 Employment (See LDP Representation Part 2 (form 4))

In relation to the second table within Policy E1 detailing new employment space, it is highlighted that the site reference should be amended to clarify that the employment designation 'South of Maldon' does not apply to the Wycke Hill South site (ref: S2 (c)). The Linden Homes site is only 2.8 ha, whereas the designation is for circa 4.5 ha. It is clear that the employment allocation should relate to site S2 (a) (and this is consistent with the Agreed Statement between the parties) and the policy should be amended to reflect this.

We raised this point within our earlier representations and we are surprised that MDC have not addressed this clear error.

Policy H1 Affordable Housing (See LDP Representation Part 2 (form 5))

Consistent with both their representations to the earlier consultation document and the more recent analysis (March 2014) submitted by DPE and CEG, Linden Homes consider that the 40% affordable housing target for the SMGS is too high.

The NPPF is clear in relation to plan preparation (Para. 173) that "*development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened.*"

DPE and CEG have therefore provided clear and cogent evidence that the 40% affordable housing requirement is not viable (and Linden Homes concur with their analysis). The NPPF therefore requires the burdens on development to be revisited and reduced.

In the absence of this Linden Homes consider that the policy will act as a barrier to housing delivery and result in regular (and inefficient) viability testing on a the majority of planning applications in these areas (increasing the burden on developers).

Policy H1 should be amended, and the affordable housing requirement within the SMGS reduced, to reflect this clear viability evidence.

Policy N2 Natural Environment and Diversity (See LDP Representation Part 2 (form 6))

The policy test suggested in the third paragraph of Policy N2 is not consistent with the NPPF. It states that where any "*potential adverse effects*" to the biodiversity value of a designated site are identified, the proposals will "*not normally be permitted*". Such a threshold however is very low and the NPPF (para 118) appropriately recognises both that the appropriate threshold for assessing proposals is instead "*significant harm.*" It also recognises the need to assess whether, if such harm cannot be avoided, LPA's should explore if it can be "*adequately mitigated, or, as a last*



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resort, compensated for” before an LPA should refuse planning permission. This policy is clearly inconsistent with National Planning Guidance, unsound in this respect, and should be amended.

We trust that the above is self-explanatory and we reserve our position to amplify our concerns in the context of the forthcoming LDP Inquiry will be addressed by MDC in progressing the LDP. If you have any queries please do not hesitate to contact me or my colleague Timea Nacsá.

Yours sincerely

Daniel Lampard

Director

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