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Part 2 - Regulation 19 and 20 of the 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 number

b. Policy reference

H1 (Affordable Housing) 

c. Proposals map

d. Other section (please specify)

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

a. Legally compliant

YES ☐NO ☐

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.

b. Sound

YES ☐NO ☒

To be 'sound' a Local Plan should be positively prepared, justified, effective and consistent with national policy. This is required by Government guidance.

If you do not consider the LDP to be sound, please complete section 2.3 below

2.3 Do you consider the Maldon District to be unsound because it is not ... (✓ 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, 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.

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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.

If the box is not big enough for your comments, please attach another page marked appropriately.

Lambert Smith Hampton has already submitted written representations on behalf of Persimmon Homes in response to the CIL Schedule Consultation. Lambert Smith Hampton's main concern was that the Viability Study (August 2013) and Viability Study Update (November 2013) fail to show the impact of the proposed CIL in the draft CIL Charging Schedule. Instead, the Viability Study Update appears to make an assumption between what is a viable scheme and that £70 per sqm is the maximum CIL which can be supported in all cases. By applying the poorly evidenced draft CIL charge of £70 alongside a 40% affordable housing requirement, the Council is at risk of potentially subjecting site S2(f) to viability constraints and could put the site's deliverability at risk..

Lambert Smith Hampton written representations also provide details of incorrect site referencing and mapping as part of the August 2013 Viability Study, which brings into question the reliability of the study as part of the evidence base. Please find Lambert Smith Hampton's CIL written representations enclosed for further detail.

A further error that was not previously identified is that the Viability Study (August 2013) and Viability Study Update (November 2013) assume costs based on developments achieving Code for Sustainable Homes level 3, whereas draft LDP policy D2 requires level 4 to be achieved. This will have resulted in a significant miscalculation. The evidence base is therefore not robust, meaning the LDP in turn is not sound.

Finally, and most importantly, to reiterate the issue raised in Persimmon Homes' written representations for Policy S4, the viability of site S2(f) has been assessed based on supporting evidence that does not make it absolutely clear what infrastructure contributions are expected from it. Table 21 of the Infrastructure Delivery Plan Update (Dec 2013) (hereby referred to as the IDP Update) only lists 5 pooling items that site S2(f) (or ADD as referred to in the document) will be subject to. However, the only reason why it has been excluded from other items, such as contributions towards the Plume School and junction mitigation works, is because CIL regulations prohibit the use of more than 5 contributions for specific S106 pooling (as outlined in paragraph 15.16 of the IDP Update).

Paragraphs 15.26 and 15.27 of the IDP Update go on to explain that possible solutions to the limitations set by the Regulations could be that the site with the least impact is exempt from contributing towards the S106 pool, or that perhaps the list of five sites for each pooling item could be varied to fairly spread the cost. This does not suggest that site S2(f) is definitively excluded from contributing towards S106 pool items, other than the ones it is already listed against and yet the average per dwelling contribution figure provided in Table 22 (£19,525) is calculated on the assumption that it is.

This figure has then been translated into the Viability Post Consultation Update (November 2013), where Table 7.5 continues to not apply costs relating to pooling items such as junction mitigation works and the Plume School in its per dwelling calculation for site S2(f). The vital point here is that there is a very real danger that the infrastructure contribution for site S2(f) has been drastically under estimated as it is possible that it will not be exempt from contributing toward certain S106 pool items as has been assumed. This is more likely to be the case in light of the Government's latest CIL Regulation Amendments (February 2014), which extends the deadline for when local authorities can no longer pool from more than five contributions from 6th April 2014 to 6th April 2015.

Furthermore, the IDP Update (2013) and Viability Study Update (2013) assume the infrastructure costs for each site that make up the Garden Suburb allocations. However, the level of infrastructure contributions that will be needed for smaller sites to meet their own infrastructure needs will not be known until the details of Site S2(d) site specific S106 Agreement to deliver the range of infrastructure required to service the site, on-site, is negotiated. Until this point, the viability and expected infrastructure delivery of each site is all based on uncertain assumptions.

This means that the viability of site S2(f) has been assessed by the Council against an incomplete set of assumed infrastructure contribution costs. Once the CIL rate of £70 per sqm is applied, as per the draft CIL schedule, and the 40% affordable housing requirement, as per draft LDP policy H1, the development of site S2(f) could potentially becomes subject to viability constraints, which in turn could hinder its ability to contribute towards the district's five year housing delivery.

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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.

If the box is not big enough for your comments, please attach another page marked appropriately.

The viability studies that form part of the evidence base should be reviewed and corrected to ensure that all errors are addressed. The Council should ensure that the details and information within the evidence base assessments and the draft LDP are consistent and that unjustified assumptions are avoided. Until then, Persimmon Homes will continue to query how robust the draft affordable housing requirement and CIL rate are.

The level of affordable housing required for site S2(f) and S2(e) should also be reduced to 25% as a reflection of the level of infrastructure contributions these sites will be required to provide as part of the North Heybridge Garden Suburb. This is particularly necessary in light of the shortcomings of the IDP Update (December 2013) and Viability Study Update (November 2013), in which it is likely that the assumed infrastructure contributions for site S2(f) have been significantly under estimated, thereby potentially putting the viability and deliverability of the site at risk.