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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 Local Development Plan (LDP) does this representation relate?

- | | |
|--|---|
| <p>a. Paragraph
(please specify paragraph number)</p> <p>Click here to enter text.</p> | <p>b. Policy
(please specify policy reference)</p> <p>Policy H1</p> |
| <p>c. Proposals Map</p> <p>Click here to enter text.</p> | <p>d. Other section
(please specify)</p> <p>Click here to enter text.</p> |

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

- | | |
|--|---|
| <p>a. Legally compliant
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</p> | <p>Yes <input checked="" type="checkbox"/></p> <p>No <input type="checkbox"/></p> |
| <p>b. Sound
To be 'sound' a Local Plan should be positively prepared, justified, effective and consistent with national policy. This is required by Government guidance</p> | <p>Yes <input type="checkbox"/></p> <p>No <input checked="" type="checkbox"/></p> |

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

- | | |
|--|--|
| <p>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</p> | <p><input checked="" type="checkbox"/></p> |
| <p>b. Justified
To be justified the plan must be:</p> <ul style="list-style-type: none"> • Founded on a robust and credible evidence base; • The most appropriate strategy when considered against the reasonable alternatives. | <p><input checked="" type="checkbox"/></p> |
| <p>c. Effective
To be effective the plan must be:</p> <ul style="list-style-type: none"> • Deliverable; • Flexible; • Able to be monitored. | <p><input checked="" type="checkbox"/></p> |
| <p>d. Consistent with National Policy
The Plan must be consistent with Government guidance as set out within the National Planning Policy Framework</p> | <p><input checked="" type="checkbox"/></p> |

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.

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

Policy H1, whilst applying a reduction in the level of affordable housing sought within part of the North Heybridge Garden Suburb, seeks 40% affordable housing across strategic allocations within the Maldon Garden Suburb subject to scheme viability.

This level of affordable housing is not robustly demonstrated in terms of either housing need or viability to be appropriate.

This matter is considered in more detail in the attached supporting reports prepared by Pioneer on behalf of CEG and Dartmouth Park Estates to review:

- the Council's housing requirements evidence base
- the Council's infrastructure and viability evidence base, and submitted in a response to the consultation on the draft CIL Charging Schedule (ending on the 7th of March 2014).

These reports are attached and should be read in conjunction with this response form.

Housing Need

Re-analysis of the SHMA12 Update / SHMA08 highlights deficiencies in the Council's evidence base in respect of its assessment of net affordable housing need. The review of the Council's evidence base suggests that the requirement for affordable housing has been unjustifiably inflated.

Viability Summary

The assumptions made in the Council's viability evidence base regarding what will incentivise a willing landowner are unrealistic. Such false assumptions are likely to jeopardise the delivery of individual sites or, at least delay their delivery.

The viability of the South Maldon Garden Suburb is likely to be further jeopardised by the combination of the proposed reduction in the housing numbers allocated across the allocation, the imposition of CIL and the requirement to contribute to additional and substantial infrastructure improvements.

In our view, any continuing desire to impose a 40% affordable housing target upon the South Maldon Garden Suburb allocation will impose considerable strain on the deliverability of this strategically required site. A review of the available evidence suggests that 20% is likely to be the maximum appropriate level of affordable housing in respect of the South Maldon Garden Suburb Strategic allocation. It is worth noting the general evidence from elsewhere which suggests that a 40% level of affordable housing has proved to be undeliverable without significant levels of grant funding.

Similar issues have recently (December 2013) been considered by the examining Inspector on the Wiltshire Core Strategy, which also proposed a 40% affordable housing target. In a letter to Wiltshire Council – the Inspector's concerns regarding the validity of the viability evidence base to

robustly support proposed policy requirements and future CIL charges have resulted in the Council re-visiting its assessment of viability in an attempt to determine a deliverable Plan. The Inspector is yet to publish the report.

CEG respectfully suggest that for proposed Policy H1 to be rendered sound these concerns need to be re-visited and addressed in liaison with stakeholders and most particularly the developers of the proposed Garden Suburb. In CEG's view, these concerns can be dealt with some further consideration of the affordable housing needs and viability issues and with a relatively minor amendment to policy H1 (see 2.6 below).

Economic viability and flexibility of delivery will be worsened by the proposed inclusion in Policy H1 of wording (and repeated at paragraph 5.7 of the supporting text) seeking that developer contributions for affordable housing include 'free serviced land'. There is nothing in national guidance that requires developers to contribute free serviced land when making provision for affordable housing. The cost burden associated with this requirement does not appear to be taken into account within the Council's viability evidence base.

A further concern is that the wording in Policy H1 states that 'the number type and tenure of affordable homes' should be provided in accordance not only with the SHMA (in respect of which the attached Pioneer report raises significant concerns regarding quantum, dwelling size and affordable housing tenure), but also in accordance with 'the Council's adopted Affordable Housing Guide' and 'relevant strategies'.

The 'Affordable Housing Guide' ("AHG") was published in 2005 and is therefore outdated. Reference is made in the AHG to a 2003 Housing Needs Survey. The AHG acknowledges that it does not have the status of a Supplementary Planning Document ("SPD"), and it is not apparent that a replacement affordable housing SPD has been prepared, consulted upon and adopted subsequently. In view of its lack of SPD status and given its age extremely little weight should be applied to the preferences expressed within the AHG.

The wording of proposed Policy H1 (and in supporting text paragraph 5.9) also suggests that the detail of how affordable housing financial contributions are to be calculated will be set out in the 'Maldon District Housing SPD' and that such calculations 'should be in conformity' with this SPD.

It is of significant concern that the Council appears to be seeking to delegate significant requirements in respect of affordable housing financial contribution calculations, quantum, dwelling size and tenure to SPD and particularly where this includes an outdated document that acknowledges that it does not have SPD status. Delegation of these matters to SPD is contrary to the NPPF.

The Examining Inspector of the Leeds City Core Strategy has recently confirmed that an SPD is an inappropriate tool for setting out affordable housing targets. The Inspector, in a letter to the local authority dated the 8th of November 2013, did not accept that leaving affordable housing thresholds or targets to an SPD was either appropriate or in accordance with national guidance. The Inspector stated that if such matters were not included in Plan policy wording it would not be possible to 'assess whether the development planned in the Core Strategy is viable and deliverable' (paragraph 4) and unless the draft Local Plan approach was modified to resolve this 'the Core Strategy's approach to the provision of affordable housing cannot be said to be sound' (paragraph 6).

Whilst the Leeds examining Inspector is referring to the overall affordable housing quantum target, the concerns reasonably apply to any requirement (i.e. including in respect of dwelling size mix, tenure split and standards) that will impact upon the cost of development. The NPPF is clear that the cumulative impact of all such costs should be assessed at the Plan making stage to ensure that these do not threaten the deliverability of the Plan.

The proposed policy wording seeks that a 'commuted sum payment' will be sought where an incomplete number of affordable dwellings are provided on-site. It is unclear from the Policy wording itself what this means. As worded the sentence fails to accord with paragraph 154 of the NPPF – i.e. it does not provide 'a clear indication of how a decision maker should react to a development proposal'.

However, supporting text (paragraph 5.7) suggests that the Council will seek a commuted sum payment where the application of an affordable housing target results in a part dwelling. This approach does not accord with national guidance which sets out (at paragraph 50) that financial contributions or off-site contributions are to be 'broadly equivalent' to that which would have been provided on-site. A part dwelling cannot physically be provided on-site and it would therefore be impossible in this scenario to seek a 'broadly equivalent' contribution to that which would have been provided on-site. This should be a matter for negotiation with developers as opposed to inflexible prescription through Policy wording.

As drafted, neither the evidence base which purports to support policy H1 or the policy wording itself can be described as justified, positively prepared, effective and consistent with national policy.

- 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.

Draft Policy H1 should be amended as follows:

All housing developments that provide a gross of five or more homes, or comprise an area of 0.5 hectares or larger, will be expected to contribute towards affordable housing provision to meet the identified need in the locality and address the Council's strategic objectives on affordable housing.

The affordable housing requirements for each sub-area in the District are as follows:

North Heybridge Garden Suburb:

North of Heybridge - S2(d) 25%

North of Holloway Road - S2(e) 40%

West of Broad Street Green Road - S2(f) 40%

*South Maldon Garden Suburb ~~40~~**20**%*

Strategic Allocations at Maldon, Heybridge and Burnham-on-Crouch 40%

All other developments:

Northern Rural, Maldon Central and South and Rural South 40%*

Maldon North and Rural South East Higher 30%

Rural South East Lower 25%

**As indicated in FIGURE 7*

Any relaxation of the above requirements will only be considered where the Council is satisfied, on a site by site basis, that such requirement will render any development proposals unviable.

Affordable housing should be provided on-site, the contribution from developers should ~~comprise of free serviced land~~ and to provide the number, size, type and tenure of affordable homes required by the Council's policies in accordance with the up-to-date objective SHMA evidence and having regard to site viability. ~~The Council's~~ updated supplementary planning document ~~adopted Affordable Housing Guide, and relevant housing strategies of the Council~~ will reflect and accord with Policy H1.

In exceptional circumstances the Council may consider accepting financial contribution from the developer where it is justified that affordable housing cannot be delivered on-site, or that the District's need for affordable housing can be better satisfied through this route. ~~Gommuted sums will also be charged for an incomplete number of affordable units provided on site.~~

~~The development of any affordable housing and the calculation of any financial contributions should be in conformity with the details set out in the Maldon District Strategic Housing SPD.~~

It may also be appropriate to revise the 40% affordable housing targets downwards in respect of other site locations where these are informed by artificially low benchmark land value thresholds within the Council's viability evidence base. Additional viability assessment work should be undertaken by the local authority along with meaningful consultation with key stakeholders to ensure that the level of developer contributions sought are based on 'real world' assumptions in respect of the returns that landowners will reasonably expect to achieve.

Supporting text should be amended to reflect the alterations to Policy wording proposed above.

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.

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

The concerns raised involve complex issues which will benefit from clarification through our attendance at the Hearing sessions.

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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.