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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<br/>(please specify paragraph number)</p> <p>Click here to enter text.</p> | <p>b. Policy<br/>(please specify policy reference)</p> <p>Policy I1</p>       |
| <p>c. Proposals Map</p> <p>Click here to enter text.</p>                                   | <p>d. Other section<br/>(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><b>a. Legally compliant</b><br/>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>b. Sound</b><br/>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><b>a. Positively prepared</b><br/>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>b. Justified</b><br/>To be justified the plan must be:</p> <ul style="list-style-type: none"> <li>• Founded on a robust and credible evidence base;</li> <li>• The most appropriate strategy when considered against the reasonable alternatives.</li> </ul> | <p><input checked="" type="checkbox"/></p> |
| <p><b>c. Effective</b><br/>To be effective the plan must be:</p> <ul style="list-style-type: none"> <li>• Deliverable;</li> <li>• Flexible;</li> <li>• Able to be monitored.</li> </ul>  | <p><input checked="" type="checkbox"/></p> |
| <p><b>d. Consistent with National Policy</b><br/>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.

CEG supports the aim of policy I1 to work with relevant partners and infrastructure providers to maintain and improve infrastructure provision in the District.

CEG would anticipate contributing and providing infrastructure relevant and proportionate to the delivery of their part of the South Maldon Garden Suburb proposal. However, the assumptions made about the ability of the development to contribute to the range of improvements contained in the Council's IDP, Policy S4, Policy H1, other related policy costs and CIL are firstly doubtful and secondly likely to jeopardise the delivery of a major strategic allocation. This view is explained further in the attached Infrastructure and Viability Evidence Base Review document prepared by Pioneer.

**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.

In CEG's view, there are a number of solutions which could combine to render the Plan sound and ensure the viable delivery of the South Maldon Garden Suburb. These solutions are contained in the series of representations related to individual policies and the attached Infrastructure and Viability Evidence Base Review and Housing Requirement Evidence Base Review.

**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.

**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.**

0167-5387-11-1234

**Maldon District Council**

**Infrastructure and  
Viability Evidence Base  
Review**

**Prepared by:**

**Pioneer Property Services Ltd**

**On behalf of:**

**Commercial Estates Group and  
Dartmouth Park Estates**

**6<sup>th</sup> March 2014**

## CONTENTS:

1. INTRODUCTION.....	3
2. STATUTORY AND POLICY CONTEXT .....	4
3. LOCAL AUTHORITY EVIDENCE BASE .....	11
4. CONCLUSION .....	30
5. APPENDIX 1 .....	34

## **1. INTRODUCTION**

- 1.1 This report has been prepared by Pioneer on behalf of Commercial Estates Group and Dartmouth Park Estates (the promoters of the two largest sites within the proposed South Maldon Garden Suburb) to review the infrastructure and viability evidence base informing the Maldon District Council (“the Council”) draft Community Infrastructure Levy Charging Schedule and Pre-Submission Local Development Plan 2014-2029.
- 1.2 The following section of this report reviews the statutory context in which CIL rates should be set, alongside the requirements within national guidance pertinent to both the setting of CIL rates and new Local Plan policy. The third section reviews the approach taken in the Council’s viability evidence, and the final section draws conclusions.



## 2. STATUTORY AND POLICY CONTEXT

- 2.1 Local authorities are empowered through Section 206 of the 2008 Planning Act (as a 'charging authority') to charge a Community Infrastructure Levy ("CIL"). In accordance with the 2008 Planning Act local authorities 'must have regard', in line with the approach set out within CIL Regulations, to the 'actual and expected costs of infrastructure' and 'to the economic viability of development'.<sup>1</sup>
- 2.2 The 2008 Planning Act requires that charging authorities submitting a draft Charging Schedule for examination also submit a signed declaration confirming, among other things, that 'the charging authority has used appropriate available evidence to inform the draft charging schedule'.<sup>2</sup>
- 2.3 The above aspects of the 2008 Planning Act are built upon in CIL Regulation 14<sup>3</sup> – this requires that the charging authority 'must strike an appropriate balance between' funding infrastructure from the levy (having regard to the 'actual and expected estimated total cost of infrastructure') and the 'potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area'.
- 2.4 This reflects the CIL Regulations as amended (and which came into force on the 24<sup>th</sup> of February 2014); these, significantly, remove the ability of the charging authority to 'aim to' strike 'what appears to charging authority to be' an appropriate balance between funding through the CIL and the impact on economic viability of development in an area.
- 2.5 The 2014 CIL Regulations are therefore explicit: the imposition of CIL charges must not compromise the economic viability of development in an area (i.e. jeopardising the delivery of the level of development planned for within Local Plans).
- 2.6 It is apparent that to be able to strike the above balance the local authority (i.e. charging authority) will have to know the actual and estimated total cost of infrastructure requirements in the area and to undertake an assessment of the impact of economic viability upon development in the area.
- 2.7 The 2008 Planning Act and the CIL Regulations (as amended) make no reference in Regulation 14 to suggest that CIL charges are of secondary importance to any other single planning requirement, such as affordable housing. As such, when determining what is an 'appropriate balance' the CIL Regulations do not suggest that CIL charges should be

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<sup>1</sup> Part 11, Section 211 (2), 2008 Planning Act

<sup>2</sup> Part 11, Section 212 (4), 2008 Planning Act

<sup>3</sup> The Community Infrastructure Levy Regulations 2010, as amended (2014)

reduced to enable a local authorities full affordable housing preferences to be met through developer contributions, as opposed to vice versa, particularly where the Council is yet to adopt an NPPF compliant Local Plan affordable housing policy.

- 2.8 Furthermore, to ascertain what will be an 'appropriate balance' in terms of the CIL charges to be levied having regard to the potential effects on the economic viability of development and other sources of funding in the area, a local authority will need to have a robust understanding of the level of non-site specific infrastructure that will be essential to enable the planned supply of housing / employment land to come forwards in an area – without this infrastructure development will be physically unable to proceed, and the ability to viably deliver the scale of development and sites set out within Local Authorities' Local Plans will be threatened contrary to the National Planning Policy Framework ("NPPF" - published on the 27<sup>th</sup> of March 2012).
- 2.9 'Community Infrastructure Levy Guidance' ("CILG") was published by the Department for Communities and Local Government in April 2013 - this guidance should now be read in the light of the amendment to CIL Regulation 14.
- 2.10 The CILG confirms that 'Charging schedules should be consistent with and support implementation of up-to-date Local Plans in England', and that the NPPF should be taken into consideration when charging schedules are drafted.<sup>4</sup>
- 2.11 To this end it should be noted by charging authorities that the NPPF places 'significant weight' on 'the need to support economic growth through the planning system'<sup>5</sup> and seeks to 'boost significantly' housing supply.<sup>6</sup> Where Local Authorities are unable to 'demonstrate a five-year supply of deliverable housing sites' the NPPF states that relevant policies in respect of housing supply will be rendered out of date.
- 2.12 When plan making local authorities are required by the NPPF to draw on 'adequate, up-to-date and relevant evidence' with strategies for housing, employment and other land uses being integrated and 'taking full account of relevant market and economic signals'.<sup>7</sup> Local Authorities should take account of changing market conditions when reviewing both new obligations and revisions to existing obligations taking a flexible approach to 'prevent planned development being stalled'.<sup>8</sup>

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<sup>4</sup> paragraph 4, CILG

<sup>5</sup> Paragraph 19, page 6, NPPF

<sup>6</sup> Paragraph 47, page 12, NPPF

<sup>7</sup> Paragraph 158, page 38, NPPF

<sup>8</sup> Paragraph 205, page 47, NPPF

2.13 The NPPF is clear that the:

*“...sites and scale of development identified in the plan should not to be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened.”*

The impact of costs associated with ‘any requirements’ including affordable housing, standards, and infrastructure (including through CIL), will need to be assessed to ensure that these do not preclude the provision of:

*“...competitive returns to a willing land owner and willing developer to enable the development to be deliverable.”*

(paragraph 173, page 41)

The cumulative impact on development in a Local Authority area of both proposed and existing local standards / policies ‘that support the development plan’ should be assessed so as not to put the:

*“...implementation of the plan at serious risk, and should facilitate development throughout the economic cycle.”*

(paragraph 174, page 42)

In paragraph 175 the NPPF states that:

*“Where practical, Community Infrastructure Levy charges should be worked up and tested alongside the Local Plan. The Community Infrastructure Levy should support and incentivise new development...”*

(paragraph 175 – emphasis added)

2.14 The NPPF goes on to emphasise the importance of ensuring:

*“...that there is a reasonable prospect that planned infrastructure is deliverable in a timely fashion. To facilitate this, it is important that local planning authorities understand district-wide development costs at the time Local Plans are drawn up. For this reason, infrastructure and development policies should be planned at the same time, in the Local Plan. Any affordable housing or local standards*

*requirements that may be applied to development should be assessed at the plan-making stage, where possible and kept under review.”*

(paragraph 177 – emphasis added)

2.15 The CILG re-confirms<sup>9</sup> the Government's objective that CIL charges should ‘have a positive economic effect’ on development within an area, and clarifying the meaning of ‘an appropriate balance’ sets out that this requires local authorities to balance ‘securing additional investment for infrastructure to support development’ (i.e. that which is necessary to enable development to take place) with the potential impact upon development economic viability in an area.

2.16 Further guidance is provided within the CILG on the approach to be taken by local authorities to infrastructure planning. The CILG makes it clear that:

*“A charging authority needs to identify the total cost of infrastructure that it desires to fund in whole or in part from the levy.”*

(paragraph 12, CILG)

Before such decisions can take place the CILG confirms that the charging authority needs to know i) what additional infrastructure is actually required within an area to support development and ii) what other sources of funding are available.<sup>10</sup>

2.17 The identified infrastructure needs ‘should be directly related to the infrastructure assessment’ underpinning the ‘relevant Plan’, and the level and type of infrastructure identified in the Plan as necessary for local development and growth needs to be realised.<sup>11</sup> The ‘aggregate funding gap’ should be evidenced thus demonstrating the ‘need to levy’ CIL charges.<sup>12</sup>

2.18 Given that it is inappropriate for a CIL Examination to question the validity of infrastructure planning already set out within an adopted Plan, it is extremely important that the process of developing Local Plan policies and CIL approaches are undertaken concurrently (in line with the NPPF) to ensure that an appropriate balance between the necessary level of CIL funded infrastructure and Plan requirements is struck, and that this evidentially demonstrated to be the case.

<sup>9</sup> paragraph 8, CILG

<sup>10</sup> paragraph 12, CILG

<sup>11</sup> paragraph 13, CILG

<sup>12</sup> paragraph 14, CILG

- 2.19 This will include showing and explaining how proposed CIL rates will ‘contribute’ toward the implementation of the Development Plan through an assessment of economic viability.<sup>13</sup> Evidence should also be prepared and provided regarding the contributions achieved through s106 agreements ‘in recent years’ (including affordable housing).<sup>14</sup>
- 2.20 Clearly, without the necessary level of infrastructure development will be unable to proceed, and growth in line with Local Plan strategies will be threatened. Whilst CIL charges must be set to take into account other development costs arising out of plan policies<sup>15</sup> and economic viability maintained, it is insufficient to simply take the view that a single proposed policy requirement (i.e. such as a draft local authority wide affordable housing target) is of overriding importance, and something to be provided at all costs and at the expense of essential levels of infrastructure funding through the CIL.
- 2.21 Indeed, the CILG also confirms that where a CIL is charged ‘section 106 requirements should be scaled back to those matters that are directly related to a specific site’<sup>16</sup> – a district wide blanket affordable housing target that fails to robustly reflect sub-markets and, in respect of large strategic allocations, site specific infrastructure costs, is unlikely to facilitate housing delivery and economic growth. Without the necessary levels of infrastructure the ability to deliver all forms of development will be put at risk, making adopted or draft Plans inconsistent with the NPPF and of reduced weight.<sup>17</sup>
- 2.22 When considering the approach to economic viability the CILG confirms that various valuation models and methodologies can be applied,<sup>18</sup> although the viability section of online national planning practice guidance published in its final form by the Government on the 6<sup>th</sup> of March 2013 (the principals of which apply to CIL viability assessment) stresses that ‘Above all, consistency is required’ in the approach to viability assessment. The online national planning practice guidance encourages local authorities:
- “...to ensure that their evidence base for housing, economic and retail policy...is fully supported by a comprehensive and consistent understanding of viability across their areas.”*
- 2.23 When assessing viability the CILG sets out that ‘an appropriate range of types of sites’ across the area should be ‘directly’ sampled, and emphasises that ‘the focus should be in

<sup>13</sup> in line with paragraph 21, CILG

<sup>14</sup> paragraph 22, CILG

<sup>15</sup> paragraph 29, CILG

<sup>16</sup> paragraph 87, CILG

<sup>17</sup> paragraph 215, NPPF

<sup>18</sup> paragraph 24, CILG

particular on strategic sites on which the relevant Plan relies' and on sites where economic viability was likely to be problematic (i.e. brownfield sites).<sup>19</sup> Setting charges 'at the margin of economic viability across the vast majority of sites in their area' should be avoided.<sup>20</sup> Differential rates may need to be set.<sup>21</sup> Where the economic viability evidence supports it a low or zero CIL rate may be set.<sup>22</sup>

- 2.24 The focus on strategic sites and avoiding imposing burdens upon development set at the margins of viability are re-iterated within the online national planning practice guidance. The online national planning practice guidance confirms that draft policies may need to be 'revised as part of a dynamic process' – it is not stated that draft policy requirements (including for affordable housing) should be rigidly adhered to at the expense of being able to deliver an appropriate balance of infrastructure in an area where economic viability is problematic.
- 2.25 Online national planning practice guidance states that viability assessments should be based on current costs and values, and not be based upon expectations of future increases in values 'at least for the first five years of the plan period'. Planning obligations should reflect local viability and local authorities should be flexible to ensure that development is not stalled – CIL charges will be statutory requirements and unable to flex unless formally reviewed. Thus, it is clear from the online national planning practice planning practice guidance that planning obligations and CIL charges should be appropriately and concurrently set at the outset having regard to economic viability if Development Plans are to be deliverable.
- 2.26 Land values are considered in the online national planning practice guidance and this confirms that values are to be informed by 'comparable, market based evidence wherever possible', and competitive returns are defined as those which a 'reasonable land owner' would be willing to accept. The competitive return to landowners and developers will vary 'significantly' according to project size and risk.
- 2.27 The online national planning practice guidance states that when plan making land values should reflect emerging policy and CIL charges, although it is clear that to accord with the NPPF these emerging policy and CIL requirements will themselves need to be informed by viability assessment to ensure that landowners remain incentivised to sell. It should not simply be assumed that land owners will accept land values reduced to reflect emerging

<sup>19</sup> paragraph 27, CILG

<sup>20</sup> paragraph 30, CILG

<sup>21</sup> paragraph 34, CILG

<sup>22</sup> paragraphs 38 and 39, CILG

policies and CIL charges – such an approach is a circular argument unlikely to deliver the NPPF objectives.

### Summary

- 2.28 CIL Regulation 14<sup>23</sup> requires that the charging authority ‘must strike an appropriate balance between’ funding infrastructure from the levy (having regard to the ‘actual and expected estimated total cost of infrastructure’) and the ‘potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area’.
- 2.29 To ascertain what will be an ‘appropriate balance’ in terms of the CIL charges to be levied having regard to the potential effects on the economic viability of development and other sources of funding in the area, a local authority will need to have a robust understanding of the level of non-site specific infrastructure that will be essential to enable the planned supply of housing / employment land to come forwards in an area.
- 2.30 Without this essential infrastructure development will be physically unable to proceed, and the ability to viably deliver the scale of development and sites set out within Local Authorities’ Local Plans will be threatened contrary to the National Planning Policy Framework

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<sup>23</sup> The Community Infrastructure Levy Regulations 2010, as amended (2014)



### 3. LOCAL AUTHORITY EVIDENCE BASE

#### Background Documents

- 3.1 The Council have published an 'Infrastructure Delivery Plan Update' ("IDP Update" – December 2013). This is intended to inform both the development of the District Local Development Plan and a CIL Charging Schedule.<sup>24</sup>
- 3.2 The IDP Update states that it provides 'a full update on all information provided in the previous versions of the IDP'.<sup>25</sup> The IDP Update states that:

*"The IDP is...a key evidence base document required to demonstrate the deliverability of the LDP as a whole, and to inform the viability analysis for the setting of CIL rates for the District."*

(paragraph 1.8, IDP Update)

It is therefore relevant to note that the IDP Update was published in December 2013, after the publication of the Local Plan and Community Infrastructure Levy Viability Study in August 2013, and after the 'Post Consultation Update' to the Local Plan and Community Infrastructure Levy Viability Study (published in November 2013).

- 3.3 It is therefore unclear that the viability assessments informing the draft CIL Charging Schedule and proposed Local Plan policy reflect the finalised position in respect of infrastructure delivery as set out within the IDP Update. This is of significant concern calling into question whether the Council's viability evidence base fully explores the deliverability of the Local Development Plan.
- 3.4 The IDP Update sets out that it 'provides evidence for the assessment of an aggregate funding gap',<sup>26</sup> but also states that it 'will not prioritise what infrastructure elements should be delivered'. This is suggested to be a matter that will be decided jointly with the Council, Essex County Council, infrastructure providers and developers.
- 3.5 Whilst it is correct that such matters should be agreed through a process of consultation, this process should logically be undertaken prior to the completion of the IDP to ensure that the IDP accurately reflects infrastructure requirements and likely funding sources (including identifying infrastructure items which are essential to enabling the scale of development proposed within the Local Development Plan and therefore need to be prioritised). As the

<sup>24</sup> paragraph 1.1, IDP Update

<sup>25</sup> paragraph 1.3, IDP Update

<sup>26</sup> paragraph 1.8, IDP Update



IDP Update is unable to identify and prioritise essential infrastructure items it is unclear that it can robustly inform the Local Development Plan, the draft CIL Charging Schedule or the supporting viability evidence.

- 3.6 A further key concern is that the IDP Update does not fully reflect the alternative distribution of growth which is now proposed through the Maldon Pre-Submission Local Development Plan 2014-2029. The IDP Update, whilst acknowledging the existence of this alternative growth proposition and reviewing the impact on pooled Section 106 contributions, confirms that unless it states otherwise the IDP Update assessment refers to the original growth distribution. The IDP Update states that where the alternative growth scenario results in:

*“...any required amendments to the assessment of infrastructure will be consider[ed] through the consultation responses.”*

(paragraph 1.5, IDP Update)

However, the impact upon infrastructure requirements of any alternative approach to growth to that reviewed through the IDP Update should be fully assessed (as required by the CIL Regulations) prior to the formulation of policy approaches and the CIL Charging Schedule. The failure to undertake such an assessment will prevent the Council from being able to ‘strike an appropriate balance’ between the level of funding to be sought through CIL and the potential impact on the economic viability of development in the area.

- 3.7 It is noted that the South of Maldon Garden Suburb (which forms a key part of the planned housing supply through the Pre-Submission Local Development Plan 2014-2029 despite the proposed allocation dwelling reduction) is included in the IDP Update assessment of a Section 106 pooling mechanism in respect of various different site specific infrastructure requirements. However, the IDP Update later confirms that ‘there are a number of items where costs have yet to be determined’.<sup>27</sup>
- 3.8 The implication is that infrastructure contributions flowing from the South Maldon strategic allocation will do so via not only Section 106 obligations (the cost of which is not yet fully assessed) but also through the CIL. The final level of CIL set will, in combination with the site specific Section 106 infrastructure requirements and the 40% affordable housing requirement proposed through the emerging Local Plan Policy, have a significant impact upon the economic viability of the development of this land.

<sup>27</sup> paragraph 15.30, IDP Update

- 3.9 In addition, it is noted that the IDP Update suggests that the South of Maldon Garden Suburb sites are subject to the same pooled Section 106 infrastructure requirements regardless of which growth scenario is applied.<sup>28</sup> In other words, the burdens imposed upon the South of Maldon Garden Suburb sites will remain just as great despite the reduction in the number of dwellings proposed through the Maldon Pre-Submission Local Development Plan 2014-2029.
- 3.10 It is therefore crucial that the contributions sought (through CIL, infrastructure and affordable housing planning obligations) are robustly tested in terms of the impact upon economic viability and the ability to ensure the delivery of the scale development proposed (as required by national guidance and statutory regulation).
- 3.11 The IDP Update, which should be prepared to inform both draft Local Plan policies as well as CIL rate setting, does not appear to robustly review the level of planning obligations achieved historically. This is of significant concern particularly with regards to affordable housing delivery.
- 3.12 However, it is possible to undertake a review of housing supply data for the period 2010/11 to 2012/13 referring to publicly available data. This suggests that only a limited proportion of Section 106 affordable housing completions have been completed without the input of any grant funding:

	Overall Affordable Housing Completions (CLG Live Table 1008)	Section 106 Affordable Housing Completions with Nil Grant Funding (CLG Live Table 1011)	% of Nil Grant Funding Section 106 Affordable Housing Completions
2010/11	0	0	0%
2011/12	40	10	25%
2012/13	20	0	0%

An average of 17% of affordable housing provided over the last 3 years has been delivered on Section 106 schemes with nil grant funding input. In the 2012/13 period dwellings were completed over all of which 20 were provided as affordable housing – i.e. 16.6%. However, all of these affordable homes were delivered with the input of grant funding.

- 3.13 Given that the 2011-15 Homes and Communities Agency Framework document and the 2015-18 Affordable Housing Prospectus make it clear that going forwards nil grant funding is likely to be allocated to provide affordable housing through section 106 schemes, the above suggests that delivering a 40% level of affordable housing on schemes is extremely unlikely to be achievable in the foreseeable future, and certainly within the early part of the

<sup>28</sup> Table 21, page 110, IDP Update

Plan. Thus the imposition of such a requirement upon sites key to the Council's housing land supply assumptions will endanger the ability to deliver the scale of housing development proposed through the Pre-Submission Local Plan.

- 3.14 Furthermore, these low levels of nil grant funded s106 affordable housing contributions pre-date the additional burden of CIL. There is therefore significant concern that CIL and affordable housing are being proposed at unrealistic levels.

#### Summary

- 3.15 Given the:

- IDP Update acknowledgment that not all section 106 costs have yet been determined (and therefore cannot be reflected within any evidence drawing on the IDP Update),
- failure of the Council to publish the finalised IDP Update ahead of the viability evidence,
- the failure of the Council to ensure that the IDP Update robustly assesses the full impact on infrastructure requirements (i.e. including non-site specific requirements) of any altered growth scenarios prior to these being proposed through draft Policy, and,
- the failure of the Council to ensure that the IDP Update reviews past rates of affordable housing delivery achieved without public subsidy, to inform the development of Plan policy,

without further work being undertaken by the Council to inform policy approaches and CIL charges, it is unclear how the Pre-Submission Local Development Plan 2014-2029 or the draft CIL Charging Schedule can be considered to be justified, effective or consistent with national guidance.

#### Viability Evidence

- 3.16 As established in this report above, Charging authorities are required to demonstrate with viability evidence that proposed CIL charges will not threaten the delivery of the scale of development and sites identified within the Development Plan.
- 3.17 The Council's viability evidence base includes a Local Plan and Community Infrastructure Levy Viability Study ("VS") prepared by HDH Planning and Development Ltd and published in August 2013. Most recently a 'Post Consultation Update' to the VS ("VS Update") was prepared by HDH Planning and Development Ltd and published in November 2013.

Together these provide the most recent assessment of viability in the district, thus superseding earlier studies.

- 3.18 The VS Update has been considered within a report dated the 10<sup>th</sup> of December 2013 prepared by the Head of Planning Services for the Planning and Licensing Committee (Special Meeting).
- 3.19 As a result of the VS Update the December 2013 Head of Planning Services report recommends that the draft LDP be amended to reduce the allocation on the South Maldon Garden Suburb by 335 dwellings with a corresponding increase being applied to the North Heybridge Garden Suburb.<sup>29</sup> This has been applied within the Pre-Submission draft LDP.
- 3.20 However, the VS Update states that the Council should enter into discussions with site promoters regarding any amendment to the distribution of housing across the strategic sites<sup>30</sup> and emphasises that additional work is necessary to determine the actual infrastructure requirements and engage with site promoters.<sup>31</sup>
- 3.21 As is set out in respect of the IPD Update in this report above, it is unclear that the Council's evidence base is of sufficient detail and accuracy to support the amendment applied to the draft LPD - it would appear that significant additional work should be undertaken to assess the impact on the infrastructure requirements associated with the strategic sites in question, the costs of these requirements, and how this affects scheme viability.

#### VS Update Policy / Standards Assumptions

- 3.22 The VS Update states that it applies the same base development assumptions as the VS<sup>32</sup> and models the same 15 strategic site locations and 14 standard sites (with village, town and urban infill typologies) as identified within the VS.<sup>33</sup>
- 3.23 However, despite there being no full analysis in the Council's evidence base of the infrastructure requirements associated with an alternative housing distribution, the VS Update introduces two scenarios in respect of the strategic site modelling: 'scenario 1' based on the draft LDP housing distribution and 'scenario 2' based on a notional (and apparently arbitrary non needs based) alternative distribution removing 335 dwellings from

<sup>29</sup> paragraph 2.7.6, December 2013 Head of Planning Services Report

<sup>30</sup> paragraph 12.12, VS Update

<sup>31</sup> paragraph 13.11, VS Update

<sup>32</sup> paragraph 9.3, VS Update

<sup>33</sup> See Table 1.1 of the VS and VS Update

the South Maldon allocations (including 140 from the subject site allocation) and adding these into the North Heybridge allocations.

- 3.24 The VS Update acknowledges that it is a 'high level' strategic assessment of viability,<sup>34</sup> as such it will be necessary to have regard to site specific circumstances for the typologies reviewed when determining application proposals. Whilst it is a high level assessment it remains crucial for cost, revenue and benchmark land value threshold assumptions to be accurately reflected within the modelling, particularly where strategic sites will be burdened with significant site specific infrastructure costs in addition to any CIL and affordable housing requirements.
- 3.25 In terms of dwelling density the VS Update confirms that it does not 'exactly follow' density assumptions applied in the Council's SHLAA, and is informed by 'the actual characteristics of the sites on the ground'.<sup>35</sup> This calls into question whether the density assumptions in the SHLAA enable the Council to draw robust conclusions as to the level of overall housing that can potentially be delivered from the sites assessed (and hence contribute to meeting the Council's housing delivery targets).
- 3.26 The VS refers to various house price data sources (including 2012 CLG Live Table 582 data, April 2013 Land Registry data, a 2013 new build survey of asking prices, the values used in the SHLAA 2012 viability study, and those used in a 2010 Three Dragons Viability Study<sup>36</sup>) and states that the residential prices used in the modelling are based on this evidence.<sup>37</sup>
- 3.27 A £2,900 per square metre open market value is applied in respect of the Maldon strategic sites, and this is described as a revised position (up from £2,600 per square metre) on the basis of consultation feedback. However, it is unclear whether the majority of those consulted (including landowners) considered this to be the position, and whether it is appropriate for the VS Update to apply the higher values ignoring its own range evidence and surveys which suggest a lower value.
- 3.28 The VS Update confirms that to reflect draft LDP Policy H1 'Affordable Housing' it assumes that all rented housing is provided for Affordable Rent at 80% of local market rents. However, when considering the likely revenues that may flow from an Affordable Rent dwelling it is unclear that the VS Update revenues reflect the fairly prescriptive approach to

<sup>34</sup> paragraph 9.1, VS Update

<sup>35</sup> paragraph 9.10, VS Update

<sup>36</sup> Chapter 4, VS

<sup>37</sup> paragraph 9.24, VS

affordability and rent setting for this tenure set out within the Maldon District Tenancy Strategy (to which Registered Providers should have regard) published in October 2012.

- 3.29 The VS assumes that developers will achieve 70% of open market values for Intermediate Sale products. The evidential basis for this is acknowledged to be scant.<sup>38</sup> The VS does not suggest that it has based the 70% conclusion on information provided by Registered Providers operating in the area – additional work should be undertaken (such as contacting Registered Providers) to ensure an accurate assumption is being applied.
- 3.30 The accuracy of this assumption is of particular importance given that the VS assumes a 30% Intermediate tenure split proportion in its baseline modelling, and thus will have a significant impact on the revenues in the VS appraisals and the viability outputs.
- 3.31 The VS Update assumes that Community Infrastructure Levy (“CIL”) payments will be payable throughout the life of a project and it suggests that this is on the basis of consultation.<sup>39</sup> However, the Communities and Local Government (“CLG”) publication ‘Community Infrastructure Levy: An Overview’ sets out that:

*“If a charging authority wishes to set its own levy payment deadlines and/or offer the option of paying by instalments, it must publish an instalments policy on its website and make it available for inspection at its principal offices.”*

(paragraph 48)

The Council’s CIL Preliminary Draft Charging Schedule (January 2014) acknowledges this point and states that:

*“The Council is considering introducing an instalment policy and is seeking views on the above points.”*

(paragraph 2.7.2)

Therefore, at this stage it remains far from certain that the Council will actually introduce an instalment approach to CIL payments. Clearly this matter has implications for any modelling of the likely impact of CIL charges upon scheme viability and the approach to be taken should be determined ahead of viability testing.

<sup>38</sup> paragraph 4.41, VS

<sup>39</sup> paragraph 10.5, VS Update

- 3.32 The VS Update states that the VS assumed a s106 contribution per dwelling of £2,500 apparently on the basis of the Council's 'past record in collecting s106 contributions'<sup>40</sup> The VS Update reduces this assumption to £1,000 per dwelling when modelling the 'effect of CIL on viability'.<sup>41</sup>
- 3.33 However, it is not clarified that this is agreed with Stakeholders as being realistic and the background data informing the conclusions on past contributions and the apparently arbitrary reduction from £2,500 to £1,000 per dwelling is not presented in the VS, the VS Update or the IDP Update. It is therefore unclear that this assumption has been robustly tested. If schemes are subject to costs in excess of £1,000 per dwelling, in combination with CIL payments and affordable housing contributions this will clearly have a significant impact upon viability.
- 3.34 In terms of infrastructure / developer contribution costs on strategic sites it is noted that the VS Update recommends that:

*"...the Council carry out further work to clarify the actual infrastructure requirements on these sites and then engage with the site promoters to agree the most appropriate strategy for delivering that infrastructure."*

(paragraph 13.11)

This confirms that there is still additional work required regarding infrastructure costs and the distribution of these costs between sites before any firm conclusions can be reached on strategic site viability.

- 3.35 It is noted that a significant proportion of the costs associated with the North Heybridge Garden Suburb sites relates to flooding alleviation. This highlights an obvious concern that the Council now intend to focus an increased level of housing growth in an area which is subject to flooding risk, as opposed to increasing the growth within the Maldon Garden Suburb, which is not subject to these flooding mitigation requirements.
- 3.36 Therefore, whilst the VS suggests that an increase in housing is necessary on the North Heybridge strategic allocation to assist with viability it is unclear that this consideration outweighs the environmental, social and economic risk associated with seeking to focus an increased level of housing supply in a location subject to flooding concerns.

<sup>40</sup> paragraph 7.13, VS Update

<sup>41</sup> paragraph 7.14, VS Update



- 3.37 The VS Update refers to Peter Brett Associate November 2013 pooled Section 106 costs to inform s106 contributions per dwelling on the strategic sites.<sup>42</sup> However, the per dwelling costs do not appear to be the same as those presented within the IDP Update<sup>43</sup> as is set out below in respect of the South Maldon Garden Suburb:

	Per Dwelling s106 cost	
	VS Update (November 2013)	IDP Update (December 2013)
Scenario 1 <sup>44</sup>	14,826	14,954
Scenario 2 <sup>45</sup>	17,250	17,410

These differences total up to a significant difference over the scheme as a whole, and will impact upon scheme viability.

- 3.38 In Chapter 7 the VS Update states that it reduces costs assumed in its modelling for environmental standards from 6% (as in the VS) to 2% over and above BCIS. It appears to suggest that this reduction is on the basis that schemes will comply with 2013 Building Regulations which ‘have more modest cost implications’ as a result of seeking ‘a significantly lower degree of improvement compared to the 2006 Code trajectory’.<sup>46</sup>
- 3.39 The VS Update refers to the recent Housing Standards Review consultation (“HSR”) and the possibility of the non-energy efficiency elements of the Code for Sustainable Homes being ‘shelved’.<sup>47</sup>
- 3.40 Where costs are assumed on such a basis it is reasonable to expect that policies should not be introduced requiring schemes to achieve environmental standards in excess of those tested (i.e. the 2013 Building Regulations).
- 3.41 However, draft Local Plan Policy D2 is noted by the VS Update at page 33 to require all new residential homes to be constructed to achieve Code for Sustainable Homes Level 4 – as such it is not clear that the VS Update environmental cost assumptions adequately reflect the costs associated with course the Council intend to take through draft Policy D2, or vice versa.
- 3.42 It is of significant concern that a 2% allowance is being applied in the VS Update, despite acknowledging that the Council will seek Code for Sustainable Homes Level 4 – the costs

<sup>42</sup> pages 25 and 26, VS Update

<sup>43</sup> Table 22, IDP Update

<sup>44</sup> Maldon Draft Local Development Plan 2014-2029

<sup>45</sup> Maldon Pre-Submission Local Development Plan 2014-2029

<sup>46</sup> paragraph 7.9, VS Update

<sup>47</sup> paragraph 7.6, VS Update



associated with achieving these standards range beyond the energy element of the updated Building Regulations and the HDH 2% allowance is not demonstrated to reflect the full costs associated with these matters as experienced in the real world.

- 3.43 In Chapter 8 the VS Update sets out draft Local Plan policies and seeks to explain how the economic impact of these has been accounted for within the viability modelling assumptions.
- 3.44 At paragraph 8.14 the VS Update notes that the draft Policy D1 refers to design standards within a 'Maldon Design Guide' which, at the time the VS Update was undertaken remained to be published. On this basis the VS Update makes it clear that any costs associated with requirements within this will need to be tested.
- 3.45 In this regard it is relevant to note that paragraph 153 of the NPPF confirms that:

*“Supplementary planning documents should be used where they can help applicants make successful applications or aid infrastructure delivery, and should not be used to add unnecessarily to the financial burdens on development.”*

The Council should take care to ensure that the requirements of the NPPF in respect of the intended purpose of SPD are adhered to, and ensure that they do not add additional burdens outside the scope of Plan policy. All standards and policy requirements should be introduced and tested at the Plan making stage in accordance with the NPPF – the VS Update does not provide such an assessment.

- 3.46 Referring to preferences expressed by the Council requiring that Registered Providers ensure that 15% of all new affordable housing is provided as 'older peoples' homes'. The VS Update assumes that this will add nil additional costs to the scheme on the basis that Lifetime Homes Standard costs are already accounted for in the VS Update response to draft LDP Policy D2, and that the restriction of the dwellings to older people will not necessitate any additional standards over and above Lifetime Homes to be applied.<sup>48</sup>
- 3.47 However, this fails to assess whether or not the enforcement of this occupation restriction will result in any decrease in the revenues payable by Registered Providers. The approach also fails to reflect that whilst draft LDP Policy D2 seeks all new homes to be built to Code for Sustainable Homes Level 4, this does not impose a mandatory Lifetime Homes

<sup>48</sup> paragraph 8.29, VS Update

Standards requirement,<sup>49</sup> and it is unclear that the BCIS +2% assumption applied by the VS Update reflects the full costs associated with constructing to Code for Sustainable Homes Level 4 or Lifetime Homes Standards.

- 3.48 Simply including flexibility in Policy wording to enable the viability impact of these costs to be tested on a site by site basis without demonstrating that the requirements will avoid threatening the deliverability of planned development is insufficient and contrary to the NPPF.
- 3.49 When considering the impact of the costs imposed through draft LDP Policy D2 regard should be had to the 'Housing Standards Review' ("HSR") consultation paper published by the Department for Communities and Local Government in mid-August 2013 – this suggests that the Government consider that any such requirements should be soundly assessed in terms of need and viability.
- 3.50 The VS Update acknowledges in respect of affordable housing that 'the particular need is for 1 bedroom units'.<sup>50</sup> The VS Update does not test a specific affordable housing mix but applies an approach that makes the broad assumption of an average 80m<sup>2</sup> floor-area per affordable dwelling.<sup>51</sup> It is unclear that the VS Update modelling fully reflects the requirement within proposed Policy S4 of the Pre-Submission Local Plan, which seeks 'a significant proportion' of dwellings in a tenure and form 'appropriate for meeting the housing needs of an older population'. A mix of housing sought by the Council that results in alternative floor areas to those modelled in the VS Update will result in different cost / revenue assumptions.

### **Land Value Benchmark**

- 3.51 The land value viability thresholds (against which modelled Residual Land Values are compared) within the VS Update are based on those derived in Chapter 6 of the VS. In Chapter 10 the VS (and the VS Update) assume a gross £330,000 viability threshold per hectare for all of the strategic sites. This is derived by taking a £25,000 per hectare agricultural land value, uplifting it by 20% to £30,000 and then adding a premium of £300,000.<sup>52</sup> However, it is unclear that this accurately reflects the values that will be necessary if 'willing' land owners are to be incentivised to release land for housing development.

<sup>49</sup> This is only mandatory for Code Level 6, page 208 November 2010 Code for Sustainable Homes Technical Guidance – there is no specific requirement in draft Policy D2 for Lifetime Homes Standards to be sought.

<sup>50</sup> paragraph 8.31, VS Update

<sup>51</sup> Table 8.2 and paragraph 8.34, VS Update

<sup>52</sup> paragraphs 6.24 and 6.25, VS

- 3.52 Instead of making the real-world assumption that a land owner will wish to maximise their return as a function of the proposed end use of the site and to secure as large a proportion of gross development value as possible the VS Update and earlier VS proceed on the false premise that a 'premium' over existing use will be sufficient thus enabling them to determine the level of the premium with the over-arching objective that land values must be driven down to accommodate CIL charges and the other obligations sought.
- 3.53 Such self-satisfying and circular logic allows the VS Update and earlier VS to dictate what such a premium will be irrespective of the value of the development on the land or the location of such land and, thus, it is inevitable that their determination of viability is an artificial exercise and it cannot be said that it will, as recommended by the Local Housing Delivery Group:-

*"...provide high level assurance that the policies within the plan are set in a way that is compatible with the likely economic viability of development needed to deliver the plan."<sup>53</sup>*

To suggest that land owners will calculate the value of an asset with reference to its current use rather than its contribution to potential development value is self-evidently naïve and completely undermines the analysis in the VS Update and earlier VS. No owner-occupier would sell an individual dwelling on such a basis and the imposition of an arbitrary 'premium' as a benchmark value is unlikely to incentivise landowners to willingly release sites.

- 3.54 It is therefore of great concern that the VS Update author believes that a 20% premium above existing use value<sup>54</sup> will provide a competitive return and comply with the requirements of the NPPF. The benchmark values set out cannot be regarded as representing the views of landowners, assume that landowners will accept land values being driven down to accommodate CIL, and are based on similarly flawed assumptions made in the earlier VS study.
- 3.55 Furthermore, the VS refers to Valuation Office Agency ("VOA") bulk land per hectare values for the Norwich and Cambridge areas (£1,600,000 and £2,900,000 per hectare respectively) as at 2011.<sup>55</sup> The 2011 VOA figures are acknowledged to reflect affordable

<sup>53</sup> 'Viability Testing Local Plans: Advice for Practitioners' August 2012

<sup>54</sup> paragraphs 6.24 and 6.25, VS

<sup>55</sup> page 49, VS

housing and planning gain costs in line with market expectations for the locality in question.<sup>56</sup>

- 3.56 The VS suggests that the VOA figures reflect the inclusion of Homes and Communities Agency grant funding, which is now extremely limited.<sup>57</sup> The VS suggests a £1,000,000 residential land value per net hectare 'to be an appropriate assumption' in Maldon district.<sup>58</sup> However, whilst this clearly exceeds the artificially low land value benchmarks assumed by the VS when appraising Greenfield land, it is not necessarily sufficient to meet landowner expectations / sufficient to provide a competitive return to incentivise and secure the release of land for housing.
- 3.57 However, the VS does not quantify the likely impact on the VOA values of lower grant levels, and equally the VOA Property Market Report does not identify whether or not an element of grant funding is included in the published land values. In addition the VOA values will not reflect the impact of the introduction of the Affordable Rent tenure, so it is unclear that the decrease suggested can reliably be assumed.
- 3.58 Furthermore, any such purported reduction in the VOA residual figures (as a result of reduced grant funding and / or increased affordable housing targets / introduction of CIL) has to be weighed against observations by organisations such as Knight Frank which reports there to have been increases in land values (as at June 2013) across England and Wales (and outside of Prime Central London) since 2011 of between 1.4% and 1.6%.<sup>59</sup> Land value increases are also reported nationally by Savills<sup>60</sup> in respect of Greenfield land between 2011 and February 2012. In a November 2013 paper Savills again report increases in land values (including all land, as opposed to Greenfield alone) to quarter three 2013.<sup>61</sup>
- 3.59 Whilst information is not available in the Knight Frank or Savills reports at a District / regional level it is reasonable to suggest that without in depth recent research having been undertaken by the author of the VS it would be inappropriate to assume an arbitrary reduction to the VOA residual residential land valuations to reflect a lack of grant.
- 3.60 Whether the VS and VS Update application of a gross £330,000 per hectare residual land value threshold (which is suggested based on the site areas and values set out in the

<sup>56</sup> paragraph 6.16, VS

<sup>57</sup> paragraph 6.17, VS

<sup>58</sup> paragraph 6.18, VS

<sup>59</sup> Knight Frank Residential Research Residential Development Land Index, Quarter 2 2013 Report, page 2

<sup>60</sup> Market in Minutes, UK Residential Development Land, Savills, February 2013

<sup>61</sup> Market in Minutes, UK Residential Development Land, Savills, November 2013

Appendix 2 to the VS Update to broadly equate to £550,000 per net hectare) is appropriate for strategic sites across the District of Maldon is clearly questionable.

- 3.61 Based on paragraphs 6.24 and 6.29 of the VS it is not confirmed that the uplifted Existing Use Value values (£25,000 per hectare - to which a 20% uplift and £300,000 premium are added in paragraph 6.25 for strategic sites and £350,000 for non-strategic sites<sup>62</sup> – i.e. suggesting £330,000 per hectare for strategic sites) have been agreed with stakeholders (including key landowners) attending the consultation events, or through any subsequent interviews / surveys undertaken by the author. It is not robustly demonstrated that this will represent enough of an uplift to incentivise or enable the release of such land for housing development.
- 3.62 Landowners are likely to seek to obtain a residual value in line with wider market expectations where land achieves a residential permission, and the £330,000 per gross hectare land value benchmark (i.e. broadly £550,000 per net hectare) will be insufficient for many. This will particularly be true of sites which are included within the Council's SHLAA as being deliverable (i.e. available, suitable and achievable) and which are either allocated or proposed for allocation for residential development.
- 3.63 The VS / VS Update low land value benchmark is not supported by the residual residential land values for the nearest comparable locations suggested by 2011 VOA data<sup>63</sup> for permitted Greenfield sites of between £1,600,000 and £2,900,000 per hectare.
- 3.64 Simply i) setting unrealistic targets and relying on site by site viability testing to exhort maximum levels of affordable housing provision, and, ii) concluding that landowners will have to accept reduced land values to reflect the contributions sought by the Council (i.e. to reflect 40% affordable housing and any CIL or s106 contributions) is disingenuous. As noted by Knight Frank:

*“The planning system remains a form of barrier to development however. As the National Planning Policy Framework (NPPF) beds in, a time-consuming trend for ‘planning by appeal’ has emerged. Developers and housebuilders also remain concerned about the Community Infrastructure Levy (CIL), and policymakers may need to be aware that this additional charge for developers could act as a partial brake on development activity.”*

<sup>62</sup> paragraph 6.26, VS

<sup>63</sup> taking into account affordable housing and developer contributions and assuming no abnormal constraints

(Knight Frank Residential Research Residential Development Land Index, Quarter 2 2013 Report, page 2)

Whilst there are some initial signs of an improving economy, cumulative burdens which act to reduce land values and / or returns below levels acceptable to a willing land owner and a willing developer will continue to impact negatively on overall housing delivery and economic growth contrary to Government objectives.

- 3.65 With this in mind, and in the absence of a robust and thorough review having been undertaken by the VS / VS Update author to determine what is likely to represent an appropriate uplift to incentivise landowners in the area to release land in Maldon District for residential development, it is entirely reasonable to apply a sense check to the outputs of the VS Update by comparing the residual land values modelled in respect of large greenfield sites to the net £1,000,000 per hectare<sup>64</sup> permitted residual residential land value suggested by the VS<sup>65</sup> (and which the VS appears to arrive at despite having considered the £1.6 to £2.9 million per hectare VOA residual residential greenfield land value data).
- 3.66 Whilst this net £1,000,000 per hectare represents an increase over the artificially low benchmark applied within the VS /VS Update, is not necessarily sufficient to meet landowner expectations / sufficient to provide a competitive return to incentivise and secure the release of land for housing. However, in the absence of any robust review of such matters in the VS / VS Update it is applied in the following review of the VS Update residual land values to provide an insight into the likely impact upon viability conclusions where an increased viability benchmark is applied.
- 3.67 VS Update Tables 10.5 and 10.6 summarise the outputs of the baseline appraisals (under scenarios 1 and 2) undertaken to inform the VS Update – assuming 40% affordable housing (for Maldon and Heybridge) in a 70/30 Affordable Rent and Intermediate tenure split, on greenfield land with site specific section 106 cost assumptions.<sup>66</sup>
- 3.68 The residual land values are presented on a gross per hectare basis and so cannot be directly compared to the VS net £1,000,000 per ha residential residual land value. However, net per hectare residual land values for the sites under Scenario 1 and 2 are presented in Appendix 2.

<sup>64</sup> paragraph 6.18, VS

<sup>65</sup> which informs the VS Update in terms of land value benchmarks

<sup>66</sup> as per pages 25 and 26, VS Update

3.69 Appendix 2 is not page numbered, but the table on the last page of Appendix 2 Scenario 1 suggests that at 40% affordable housing when the net residual land values are compared to the VS net £1,000,000 per ha residential residual land value (as opposed to the artificially low benchmark applied in the VS and VS Update):

- only 1 of the 4 Maldon strategic sites ('S2f Park Drive' capable of providing circa 120 dwellings) and 1 of the 4 Heybridge sites ('S2g Swifts' capable of providing circa 100 dwellings) are viable
- All three of the South Maldon Garden Suburb sites (2a, 2b, and 2c) are unviable as is 'S2d North of Heybridge'
- The Burnham on Crouch strategic sites are suggested to be viable
- comparison to the VOA residential residual land values of £1.6 to £2.9 million per hectare would still further reduce the number of sites than can be considered to be viable.

Under Scenario 2 (where the number of dwellings is increased across the Heybridge strategic sites by 335 dwellings and correspondingly decreased across the Maldon strategic sites) when compared to the net £1,000,000 residential residual land value benchmark the net per hectare residual land values generated by the baseline modelling within Appendix 2 to the VS Update<sup>67</sup> result in the same sites being unviable as under Scenario 1 (and as summarised in the bullet points above).

#### Affordable Housing VS Update Sensitivity Analysis

3.70 Table 10.7 summarises the outputs of the baseline appraisals undertaken to inform the VS Update under scenario 1 assuming a range of between 0% to 40% affordable housing and 'full developer contributions'. Again, this provides residual land value outputs on a gross site area basis. Unfortunately net residual land value outputs are not provided within Appendix 2 to the VS Update to which the VS £1,000,000 per net hectare residual residential land value can be compared.

3.71 However, using the information provided on net and gross site areas within Appendix 2 to the VS Update it is possible to estimate a gross per hectare benchmark for each site on the basis of the VS £1,000,000 per net hectare residual residential land value. In the majority

<sup>67</sup> final page (un-numbered)



of sites this suggests a gross land value benchmark of £600,000 per hectare (please see Appendix 1 to this report).

- 3.72 Whilst this gross £600,000 per hectare viability threshold represents an increase over the artificially low benchmark applied within the VS /VS Update, is not necessarily sufficient to meet landowner expectations / sufficient to provide a competitive return to incentivise and secure the release of land for housing. However, in the absence of any robust review of such matters in the VS / VS Update it is applied in the following review of the VS Update residual land values and affordable housing sensitivity testing to provide an insight into the likely impact upon viability conclusions where an increased viability benchmark is applied.
- 3.73 A £600,000 per gross hectare threshold suggests that under Scenario 1 in Table 10.7 the provision of 30% affordable housing would be marginal on the Limebrook Way site, and 35% would be unviable on all bar one of the Maldon strategic sites.
- 3.74 Additionally, the residual land values within Table 10.7 do not include any CIL contributions. Whilst this is proposed at £0m2 for North Heybridge sites S2d and S2e, a £70m2 charge will apply to the Maldon sites and worsen viability. By way of example the impact of CIL can be considered in respect of Site 2a Limebrook Way, South Maldon.
- 3.75 The IDP Update provides estimated revenues from CIL per site based on charges as set out in the draft Charging Schedule.<sup>68</sup> These reflect CIL deductions on the basis of a 30% level of affordable housing provision (which is exempt). When the site level CIL charge assumption is calculated on a per gross hectare basis using the site areas applied within Appendix 2 of the VS Update it is suggested that the Limebrook Way Site S2a will be subject to a further cost of £100,800 per gross hectare.<sup>69</sup>
- 3.76 Where this additional cost is factored in alongside a £600,000 per gross hectare land value threshold it suggests that Site S2a Limebrook Way will be marginal where 20% affordable housing is sought and unviable at 25%. Ironically, the viability will also be worsened where CIL charges are increased to reflect decreased levels of affordable housing.
- 3.77 Under scenario 2 (which results in a reduction of dwellings on Maldon sites that the Council purports is necessary to improve the viability of Heybridge) Table 10.8 suggests that the viability of site S2a Limebrook Way (the largest proposed allocation in the Maldon area) is reduced further and the provision of even 20% affordable housing makes viability marginal.

<sup>68</sup> Table 28, ID Update

<sup>69</sup> i.e. £4,788,000 divided by 47.5 hectares (gross) = 100,800 per gross hectare



- 3.78 Additionally, the results do not suggest that increasing the dwellings in Heybridge has any significant improvement in the viability of the 'S2d North of Heybridge' site (the largest proposed allocation of residential land in Heybridge) against the 1 million per hectare benchmark, with the scheme suggested to remain significantly below the viability threshold even at 0% affordable housing.
- 3.79 Furthermore, as the comparable VOA residential land values referred to in the VS Update suggest, the increased £600,000 per gross hectare land value threshold is unlikely to reflect the full amount that the land owners of strategic sites proposed for allocation through the emerging Plan can reasonably expect, and is not necessarily sufficient to meet landowner expectations / sufficient to provide a competitive return to incentivise and secure the release of land for housing in the District.
- 3.80 As such, when reasonable land value expectations and CIL costs are taken into consideration there will be increased pressure on the viability of the Maldon strategic sites (particularly sites S2a, S2b, and S2c) even at a 20% level of affordable housing provision.

### **Summary**

- 3.81 The above review of the VS and VS Update suggests that where a 40% level of affordable housing is sought from strategic sites in Maldon South this is likely to frustrate the release of land for housing, prevent economic growth, and be contrary to the NPPF requirement for the cumulative impact of policies to reflect economic realities based on current costs and values at the Plan making stage.
- 3.82 Landowners are likely to seek to obtain a residual land value in line with wider market expectations where land achieves a residential permission (suggested in the VS to be £1,000,000 per net ha for consented larger Greenfield sites). This will particularly be true of sites which are included within the Council's SHLAA and which are either allocated or proposed for allocation for residential development - the £330,000 per gross hectare benchmark value applied by the VS / VS Update to determine viability will be insufficient to secure the release of such land.
- 3.83 Viability decreases further if proposed CIL charges and likely comparable residential land values based on VOA data are taken into account, suggesting that 20% affordable housing is likely to be the maximum level that the Council should seek if an appropriate balance is to be struck between CIL contributions, site specific planning obligations – the cost of which remain to be fully assessed - and economic viability.

- 3.84 In addition, it is not apparent that there is any robust viability justification for the local authority to seek to reduce the number of dwellings upon the Maldon sites in lieu of an increase in dwellings on the Heybridge sites. Such an approach will only act to decrease the viability of the Maldon sites, and does not enable the provision of CIL payments at North Heybridge, despite that the overall allocation of housing on which this could be charged would have been increased. The impact of the proposed redistribution of housing growth on infrastructure provision across the District is not fully assessed within the IDP Update.

#### 4. CONCLUSION

- 4.1 CIL Regulation 14<sup>70</sup> requires that the charging authority 'must strike an appropriate balance between' funding infrastructure from the levy (having regard to the 'actual and expected estimated total cost of infrastructure') and the 'potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area'.
- 4.2 To ascertain what will be an 'appropriate balance' in terms of the CIL charges to be levied having regard to the potential effects on the economic viability of development and other sources of funding in the area, a local authority will need to have a robust understanding of the level of non-site specific infrastructure that will be essential to enable the planned supply of housing / employment land to come forwards in an area.
- 4.3 Without this essential infrastructure, development will be physically unable to proceed, and the ability to viably deliver the scale of development and sites set out within Local Authorities' Local Plans will be threatened contrary to the National Planning Policy Framework.
- 4.4 Given the:
- IDP Update acknowledgment that not all section 106 costs have yet been determined (and therefore cannot be reflected within any evidence drawing on the IDP Update),
  - failure of the Council to publish the finalised IDP Update ahead of the viability evidence,
  - the failure of the Council to ensure that the IDP Update robustly assesses the full impact on infrastructure requirements (i.e. including non-site specific requirements) of any altered growth scenarios prior to these being proposed through draft Policy, and,
  - the failure of the Council to ensure that the IDP Update reviews past rates of affordable housing delivery achieved without public subsidy, to inform the development of Plan policy,

without further work being undertaken by the Council to inform policy approaches and CIL charges, it is unclear how the Pre-Submission Local Development Plan 2014-2029 or the draft CIL Charging Schedule can be considered to be justified, effective or consistent with national guidance.

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<sup>70</sup> The Community Infrastructure Levy Regulations 2010, as amended (2014)

- 4.5 A review of the VS and VS Update suggests that where a 40% level of affordable housing is sought from strategic sites in Maldon South this is likely to frustrate the release of land for housing, prevent economic growth, and be contrary to the NPPF requirement for the cumulative impact of policies to reflect economic realities based on current costs and values at the Plan making stage.
- 4.6 Landowners are likely to seek to obtain a residual land value in line with wider market expectations where land achieves a residential permission. This will particularly be true of sites which are included within the Council's SHLAA and which are either allocated or proposed for allocation for residential development.
- 4.7 The £330,000 per gross hectare benchmark value applied by the VS / VS Update to determine viability will be insufficient to secure the release of such land.
- 4.8 The Government's online planning practice resource makes it clear that Plan policies should be robustly tested in terms of their economic impact upon the deliverability of housing, and that it will not be appropriate to set an unachievable affordable housing target necessitating viability testing on a site by site basis for the majority of developments.
- 4.9 If the proposed CIL charges and VS residual residential land value thresholds are taken into account a 20% level of affordable housing is suggested to be the maximum level that the Council should seek from strategic allocations in the South Maldon Garden Suburb if an appropriate balance is to be struck between CIL contributions, site specific planning obligations – the cost of which remain to be fully assessed - and economic viability.
- 4.10 However, the £1,000,000 per net hectare residual residential land value threshold referred to in the VS is not necessarily sufficient to meet landowner expectations / sufficient to provide a competitive return to incentivise and secure the release of land for housing. It may therefore be the position that even a reduced 20% level of affordable housing, in combination with the proposed CIL charges, is too great for South Maldon strategic sites to bear.
- 4.11 The concerns in respect of the artificially low viability benchmark applied by the VS / VS Update (particularly in respect of Greenfield land) apply equally to the VS Update conclusions regarding non-strategic sites.
- 4.12 In addition to concerns in respect of the viability of the Council's proposed affordable housing target (particularly on strategic sites), it is also of concern that the Council seek to impose standards in excess of Building Regulations despite that the cost of these has not

been demonstrated to be a viable additional burden. This includes requirements for the Code for Sustainable Homes and Lifetime Homes standards, the cost of which appear to be underestimated or dismissed within the Council's viability evidence base. It is also unclear that the VS Update modelling fully reflects the requirement within proposed Policy S4 of the Pre-Submission Local Plan, which seeks 'a significant proportion' of dwellings in a tenure and form 'appropriate for meeting the housing needs of an older population'. A mix of housing sought by the Council that results in alternative floor areas to those modelled in the VS Update will result in different cost / revenue assumptions.

- 4.13 Furthermore, there is no clear robust viability justification for the local authority to seek to reduce the number of dwellings upon the Maldon sites in lieu of an increase in dwellings on the Heybridge sites. Such an approach will only act to decrease the viability of the Maldon sites, and the impact of the proposed redistribution of housing growth on infrastructure provision across the District is not fully assessed within the IDP Update.
- 4.14 In view of the concerns raised in respect of the Council's IDP Update and viability evidence base it is unclear that the Pre-Submission Local Development Plan 2014-2029 and / or the draft CIL Charging Schedule can be considered to be justified, effective or consistent with national guidance, or in accordance with statutory regulation.
- 4.15 In this respect it is pertinent to note that where the economic viability of policy requirements is not robustly demonstrated examining Inspectors are likely to raise concerns, which, if unaddressed, may result in Plans being found unsound.
- 4.16 This matter has recently been considered by the examining Inspector's on the Wiltshire Core Strategy (which proposes a 40% affordable housing target) – in a letter to the Council the Inspector expresses concerns that :

*"...the figure of 40% is not justified adequately by the evidence base, particularly the Affordable Housing Viability Assessment"*

(page 3, Letter from Wiltshire Core Strategy Examining Inspector to Wiltshire Council, dated 2<sup>nd</sup> December 2013)

and that:

*"...the CS approach to affordable housing does appear to risk the delivery of key elements of the plan."*

(page 4, Letter from Wiltshire Core Strategy Examining Inspector to Wiltshire Council, dated 2<sup>nd</sup> December 2013)

The Inspector considers that the Policy cannot be rendered sound through the removal of the affordable housing target as the Inspector remains:

*“...conscious of the need to avoid the ineffective burden of individual site negotiations on the majority of schemes which come forward.”*

(page 4, Letter from Wiltshire Core Strategy Examining Inspector to Wiltshire Council, dated 2<sup>nd</sup> December 2013)

As such, the Inspector confirmed that the Policy needed to be amended to include a realistic affordable housing target informed by robust viability evidence; it is insufficient to simply require testing on a site by site basis.

- 4.17 For the Pre-Submission Local Development Plan 2014-2029 and the draft CIL Charging Schedule to be rendered sound these concerns need to be re-visited and addressed with additional work being undertaken by the Council in co-operation with key Stakeholders. This work will need to provide a full review of infrastructure requirements alongside a realistic assessment of economic viability. As a result of this additional work reductions should be proposed where necessary to policy burdens (as highlighted in this report) to ensure the deliverability of the Plan and sufficient funds to assist with addressing essential infrastructure through CIL charges.
- 4.18 Commercial Estates Group and Dartmouth Park Estates, as key stakeholders and the promoters of the two largest sites within the proposed South Maldon Garden Suburb, are keen to work with the Council to consider how best to take these matters forwards to ensure the implementation of CIL Charges and policy approaches which will facilitate the viable development of land in the South of Maldon Garden Suburb.

## 5. APPENDIX 1

Strategic Site Areas based on Appendix 2 to the VS Update:

		Site 1	Site 2	Site 3	Site 4	Site 5	Site 6	Site 7	Site 8	Site 9	Site 10	Site 11
Gross	ha	47.50	6.00	19.70	4.90	33.33	3.80	3.20	1.00	6.20	7.50	3.75
Net	ha	28.50	3.60	11.82	3.00	20.00	2.50	2.50	1.00	4.50	4.50	2.25

Land Value Benchmark based on VS Update preferred permitted Residential Land Value = £1,000,000 per hectare (net)

Net Site Value and implied gross £ per hectare benchmark based on a £1,000,000 net per ha benchmark:

		Site 1	Site 2	Site 3	Site 4	Site 5	Site 6	Site 7	Site 8	Site 9	Site 10	Site 11
Gross	ha	£600,000	£600,000	£600,000	£612,245	£600,060	£657,895	£781,250	£1,000,000	£725,806	£600,000	£600,000
Net	Site	£28,500,000	£3,600,000	£11,820,000	£3,000,000	£20,000,000	£2,500,000	£2,500,000	£1,000,000	£4,500,000	£4,500,000	£2,250,000

Whilst the gross per hectare viability thresholds set out above represent an increase over the artificially low benchmark applied within the VS /VS Update, these are not necessarily sufficient to meet landowner expectations / sufficient to provide a competitive return to incentivise and secure the release of land for housing.