

# **Representations on Sustainability Appraisal of the Pre-Submission Local Development Plan Document on Behalf of Pigeon Land Ltd**

**March 2014**



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

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

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

- |   |  |
|---|--|
| <p>a. Paragraph<br/>(please specify paragraph number) _____</p> <p>c. Proposals Map _____</p> | <p>b. Policy<br/>(please specify policy reference) _____</p> <p>d. Other section<br/>(please specify) <u>Sustainability</u><br/><u>Appraisal</u></p> |
|---|--|

**2.2.** Do you consider the Maldon District Pre-Submission 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 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<br/>(if you do not consider the LDP to be sound, please complete section 2.3. below)</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><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><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><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.

See attached sheets

- 2.5.** Please explain in the box below what change(s) you consider necessary to make the Maldon District LDP legally compliant and sound.  
Please be as precise as possible. Please explain why this change will make the Maldon District LDP legally compliant and sound. It will be helpful if you are able to put forward any suggested revised wording of the policies or supporting text.

See attached sheets

**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.

The objections made go to the heart of the plans proposals for the District and Burnham-on-Crouch and so we wish to ensure that the Inspector understands our objections.

**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.**

## Objection to Sustainability Appraisal Report

### *Summary*

- 1.1 We object to the 2014 Pre-Submission Local Development Plan (LDP) because Stage B of the Sustainability Appraisal (SA) process has not been properly undertaken. The change in strategy for Burnham-on-Crouch (Burnham) from delivering development on a single site to delivering development on three smaller sites, while having been assessed after the event, was not assessed against reasonable alternatives to the chosen spatial distribution.

### *Introduction and context of the SA process thus far*

- 1.2 The SA to the draft LDP (Sept/Oct 2013) confirmed that 8 Spatial Growth Scenarios (SGS) were presented to Members in July 2013 who were advised, in a report from the Head of Planning Services, that the advised options were considered “robust and deliverable”.
- 1.3 From the 8 SGS’s suggested to Members in July 2013 a ‘ninth’<sup>1</sup> preferred option was selected and reflected in the draft Policy S2. The draft LDP in draft Policy S2 sets the strategic growth context for the district. The draft Policy S6 confirmed the quantum of development for Burnham on Crouch from S2.
- 1.4 At the July 2013 Committee meetings Councilors decided to spread the 450 dwellings previously earmarked for ‘West of Burnham’ to three sites (‘180 to West of Burnham’, ‘180 to North of Burnham – West’ and ‘90 to North of Burnham – East’). That decision had not arisen from the earlier SA work.
- 1.5 The preferred option which the Sept/Oct 2013 draft LDP advocated was set out in draft Policy S2 for Burnham.
- 1.6 The Sept/Oct 2013 SA was updated to assess the revised distribution of development for Burnham on Crouch against the SA objectives.
- 1.7 This remains the case with Policy S2 in the pre-submission version.
- 1.8 Policy S2, has been tested against the SA objectives and the results of which are reported in Appendix C of the Pre-submission LDP SA in the LDP Policy assessment with generally positive or major positive results against social objectives, neutral or positive results against

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<sup>1</sup> [‘Ninth’ because it was not one of the 8 SGS presented by the Head of Planning.](#)

environmental objectives and neutral or positive results against economic objectives.

1.9 Paragraph 7.1.1 of the Pre-submission LDP SA states:

*An SA was undertaken of the policies presented within the Pre-submission LDP. This assessment included identifying what changes had been made since the July 2013 version and updating or amending the results of the assessment where necessary. **Appendix C** presents the detailed results of the assessment of the proposed policies. For comparison, the assessment tables also include the 2013 assessment where there have been changes to the assessment.*

1.10 The 'changes' referred to in paragraph 7.1.1 are understood to be the changes arising from the changes to the SDSs to accommodate the increased housing provision and this does not include the change in the distribution of the 450 dwellings in Burnham.

1.11 Policy S2 continues to propose a distribution of development which arose for the first time from the Council meeting of 11th July 2013.

#### ***Issues arising***

1.12 SA is an iterative process and should respond to changes in the Plan in order to maintain soundness. The appraisal of emerging and preferred options of the plan document is a critical role of the SA. The appraisal should explore how preferred options and policies will be effectively delivered on the ground to help avoid an unrealistic assessment and it should consider the effects of the plan on neighbouring areas and the rationale for the options considered and the reasons for selection of the preferred option<sup>2</sup>.

1.13 In terms of considering the effectiveness of the SA in justifying the proposed spatial scenario advocated by the District Council in Policy S2 we have considered two questions in our 2013 representations, we consider that these questions are still relevant:

- *Has the SA been updated to reflect the recent changes - is it up to date?*
- *Does the SA explain the reason for the preferred option and does it cover the degree of detail which S2 now advocates?*

1.14 These questions are discussed below.

#### ***Question 1 Has the SA been updated to reflect the recent changes? Is it up to date?***

1.15 The Pre-submission LDP SA confirms at Appendices E and F that further assessment has been undertaken since the SA of the 2012 preferred option.

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<sup>2</sup> <http://www.local.gov.uk/web/pas-test-site/chapter-6-the-role-of-sustainability-appraisal>

- 1.16 The Pre-submission LDP SA has been updated to reflect the selection of the preferred option arising from the July 2013 Committee meeting – it has caught up with the decision making process. This basic requirement (that the SA be up to date) would appear to have been met by the District Council. But that is not the only requirement of SA.
- 1.17 Importantly it is necessary for SA to inform the decision making process including the selection of the preferred options and we have seen no evidence that the decision taken on 11<sup>th</sup> July 2013 by Maldon District Council to spread the 450 dwellings for Burnham West was informed by sustainability considerations. The preferred option which emerged was not one of the 8 scenarios previously assessed and considered to be “robust” by the Head of Planning in his report to 9<sup>th</sup> July 2013 committee this was not supported by SA.
- 1.18 This appears to be confirmed by the Minute of the 9<sup>th</sup> July 2013 meeting which states (our emphasis in bold):

*The Committee then looked at an alternative solution for the agreed baseline growth allocation at Burnham on Crouch which would involve revision of the western site to provide 180 dwellings, and inclusion of new sites to the north and northeast to provide 180 and 90 respectively, with an additional 90 being held as a reserve. **The Strategic Planning Policy Manager said that this change to the baseline scenario for Burnham on Crouch would have implications in terms of viability, deliverability, affordable housing elements and infrastructure improvements.** Upon the proposition of Councilor Miss M R Lewis and seconded by Councilor R G Boyce, it was considered that the strategic growth allocation of 450 dwellings for Burnham on Crouch should be retained but possibly provided through three sites to the west (180), north (180) and northeast (90). **The Strategic Planning Policy Manager agreed to report further to the Council on the implications of this.***

- 1.19 The Minute does not include any record of what the ‘implications’ to the baseline scenario were and there appears to have been no ‘further report’ to the Council by the Strategic Planning Policy Manager on the subject. In fact the report by Head of Planning, produced for the 9<sup>th</sup> July 2013 Planning and Licensing Committee meeting, remained unchanged for the subsequent 11<sup>th</sup> July 2013 Council meeting.
- 1.20 The 11<sup>th</sup> July 2013 meeting Minute states that:

*[Councilor Channer] advised that the Committee were recommending a change to the allocation at Burnham on Crouch, splitting it over three sites rather than just*



*one.*

- 1.21 However the recommendation recorded in the Minute to the 9<sup>th</sup> July 2013 Planning and Licensing Committee includes no such recommendation. The 11<sup>th</sup> July 2013 Minute refers to an 'Addendum Sheet' which was related to the 9<sup>th</sup> July 2013 meeting recommendations but unfortunately this Addendum Sheet is not available on the Council's website with the other committee papers. It is of course possible that the Addendum sheet sought to correct the recommendation as recorded in the Minute of the 9<sup>th</sup> July 2013 meeting.
- 1.22 This matters because it is crucial for the SA to record and explain the process by which the preferred option was derived and to demonstrate that the options were assessed for their compliance with the SA objectives before the final decision on the preferred option (for inclusion in the draft LDP) was taken.
- 1.23 We made these comments in October 2013 and can find no response to the matter in the Pre-submission documentation.
- 1.24 On the basis of the available documentation there is no evidence to see how the change from 450 dwellings for the Burnham West site to 450 across three sites at Burnham on Crouch was informed by the SA. As this variant was not one of the 8 Spatial Growth Options in Appendix 4 of the Committee papers it follows that it cannot have been.
- 1.25 We reiterate our concern from our October 2013 representations that the SA appeared instead to have to catch up and justify the Councilors selection of the preferred option and that situation appears not to have changed.

***Question 2 Does the SA explain the reason for the preferred option and does it cover the degree of detail which S2 now advocates?***

- 1.26 In short the answer to this is no.
- 1.27 The SA still does not explain the reason for the preferred spatial distribution of the 450 dwellings advocated for Burnham on Crouch. In fact it is very difficult to find an explanation anywhere in the draft LDP consultation documentation for this alteration which appears to have emerged from the Council meeting of 11th July 2013. The current draft Policy S2 seeks to allocate the 450 dwellings across three sites. In the pursuit of plan soundness the draft LDP policies need to be flexible<sup>3</sup>.
- 1.28 We consider that by allocating specific numbers of dwellings to each site and setting out the

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<sup>3</sup> [http://www.pas.gov.uk/local-planning/-/journal\\_content/56/332612/15045/ARTICLE](http://www.pas.gov.uk/local-planning/-/journal_content/56/332612/15045/ARTICLE)

required phasing the District Council has allocated the sites. There is no proper analysis of the allocations in the SA the absence of which means the plan is unsound.

- 1.29 The SA does not include any assessment of the spread of the numbers so it is unknown what the rationale for the division is or how what the SA assessment results might have been with a reasonable alternative distribution of the numbers e.g. 325/141/30<sup>4</sup>. In other words in the event of deliverability issues with the sites (in the context of the specific S2 figures and site boundaries) then that part of the Plan would be unsound.
- 1.30 The SA does not include any assessment of the spatial distribution of the strategic allocations and it is unknown what the rationale for the division is or what the SA assessment results might have been with a different arrangement of the numbers e.g. 325/141/30. These numbers are the envisaged capacity of the sites.
- 1.31 In the event of deliverability issues with sites (in the context of the specific S2 spatial distribution and site boundaries) then that part of the Plan would be unsound.
- 1.32 Policy S2 and the Development Plan Key Diagram are allocating three sites in Burnham for development. The later stages of the development plan will not have flexibility to choose different development sites or to vary the level of development to be delivered on each site so these parts of the Draft Development Plan are allocations. For the Draft Development plan to be legally compliant the Sustainability Appraisal should appraise the suitability of each individual site for an allocation and the conclusions of the sustainability appraisal should have been used to prepare policy S2. There was no evidence that this has been done when we made representations in October 2013 and this remains the case now.

### ***Conclusion***

- 1.33 Draft Policy S2 needs to be subject to a site specific sustainability assessment before confirming the quantum of development for specific allocation sites in Burnham on Crouch. The SA needs to consider the options that have been chosen and those that have been discounted. If this is not done correctly then the development plan will not be legally compliant. The Development Plan is unsound as it is not supported by the appropriate evidence base to justify the decisions taken. The evidence base does not justify the sites chosen.

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<sup>4</sup> [As opposed to the proposed 180 to Burnham West, 180 to Burnham northwest and 90 to Burnham northeast.](#)