Dear Mr Parton and Ms Daines,

**Maldon District Community Infrastructure Levy and LDP costs**

I write in reply to the letter of 13 August 2015 from David Coleman, Group Manager, Strategic Planning and my brief reply of 17 August. I am now in a position to respond to the Council about the issues raised in the first part of Mr Coleman’s letter regarding the feasibility of progressing with the examination of the Maldon Community Infrastructure Levy Charging Schedule.

I have instructed one of our most senior CIL examiners, Simon Emerson, to make a preliminary assessment of the Charging Schedule, in the context of the present position of the local plan examination. In summary, his view is that the quite complicated nature of the inter-relationship between the allocated strategic sites; assumptions about specific items of infrastructure ascribed to each of them (and their cost); and the different affordable housing proportions sought, will make it very difficult to progress the examination. A fuller explanation is provided in the annex to this letter.

We have given consideration to whether the charging schedule could be progressed on the basis that the examiner makes an assumption that the local plan will be adopted, as submitted. However in advance of the Secretary of State’s consideration of the plan, we believe this would be a very significant assumption and that it may be highly vulnerable to a legal challenge.

It would appear, therefore, that the key options open to the Council at this stage are as follows:

(i) Place the Charging Schedule in abeyance until the local plan position is more clear;
(ii) Withdraw the Charging Schedule with a view to reviewing, reducing and simplifying its current scope, where there are dependencies, and resubmitting it for examination; or
(iii) Seeking the view of an alternative examiner (through an independent provider) and, if appropriate, withdrawing the Charging Schedule.
from the Planning Inspectorate and submitting it to the alternative examiner.

I hope these options are helpful. I note that option (iii) is contemplated in Mr Coleman’s e-mail to me of 9 September.

With respect to the second part of the letter, Mr Coleman raised two matters regarding the direct costs incurred by the Council as a result of the examination-in-public, and the costs of the work undertaken by the appointed inspector. We are carefully considering the points made in that letter. Unfortunately, I am not yet in a position to advise you further on this matter, but I hope to be in a position to do so next week.

Yours sincerely

Mark Southgate

Mark Southgate
Director of Major Applications and Plans
Annex: Maldon CIL Examination - Possible Progression

1. Maldon Council seeks advice from the Planning Inspectorate as to whether the CIL Examination can progress pending further progress on the Local Plan Examination. The submitted Local Plan has been called in by the Secretary of State. This note seeks to answer that question in broad procedural terms. It does not seek to comment on the merits of the proposed CIL charging schedule.

Background

2. The CIL was submitted for Examination on 12 September 2014. Mr D Vickery, the Inspector appointed to conduct the Examination of the Local Development Plan (LDP) was also appointed as Examiner for the CIL. The Inspector/Examiner informed the Council that the CIL Examination would take place after the hearing sessions on the LDP and after the Inspector was satisfied that the plan is sound and legally compliant. This delay was strongly contested in a letter (23 October 2014) from the Chief Executive of the Council to the Inspectorate. In seeking a concurrent approach to the Examinations of the LDP and the CIL, it was stated that: The Council is of the firm view that the LDP and the CIL are intrinsically linked...that both utilise the same evidence bases.... and that issues associated with the viability of infrastructure delivery and developer contributions directly relate to both documents.

3. The previously appointed LDP Inspector/CIL Examiner (Mr Vickery) and the Council are best placed to identify the degree of inter-relationship between the 2 documents. Both concluded that they were closely linked, with a shared evidence base. This strongly suggests that it would be very difficult to progress the CIL Examination in an efficient and effective way whilst the LDP Examination is stalled. The appropriateness of the CIL Examination following after the LDP Examination was set out in the Planning Inspectorate’s letter to the Council of 31 October 2014. There are no positive preliminary findings from the Inspector or, as yet, any conclusions by the Secretary of State as to whether strategic elements of the plan are sound and, therefore, likely to be adopted.

4. In terms of the statutory provisions, there is nothing contained within either the Planning Act 2008 or the Localism Act 2011 that makes having an up to date and adopted plan in place a prerequisite for the implementation of a CIL regime. The Council highlights that the Examination of Birmingham City Council’s CIL Charging Schedule has been successfully completed even though the Birmingham Plan Examination is still underway. However, the Examiner in that case was able to conclude:

   The Birmingham Plan 2031 provides a clear strategic planning framework to guide the sustainable growth of Birmingham. Although the Plan is yet to be adopted and more work and consultation is required, it is sufficiently mature and settled to enable the viability effects of CIL to be assessed.
   (Examiner’s Report, 4 June 2015, paragraph 46)

5. Mr Vickery did not express any favourable conclusion on strategic aspects of the LDP to provide any basis for assuming that strategic elements would necessarily be adopted as currently proposed. In the present unusual circumstances of the Maldon LDP, it would be difficult for an Examiner to be confident that such matters were sufficiently settled at present.

Relationship of the Charging Schedule to the submitted Local Plan
6. Among other matters, policy S2 of the Local Plan proposes a South Maldon Garden Suburb consisting of 3 specific sites and a North Heybridge Garden Suburb consisting of 3 specific sites as well as other strategic allocations. Policy H1 proposes affordable housing requirements. In most areas a 40% proportion is sought, but on the largest part of the North Heybridge Garden Suburb only 25% is sought and there are different rates for the rural areas.

7. Section 7 of the Council’s Local Plan and CIL Development Viability Study – May 2014 Update contains detailed information on infrastructure items and their assumed cost for each strategic allocation, together with the varying affordable housing proportions now sought in policy H1. At paragraph 9.1/Table 1 the Study recommends a nil residential CIL rate for 5 of the 6 specific sites making up the 2 Garden Suburbs and a £70 rate for residential in all other areas. The Council’s proposed Draft Charging Schedule proposes a nil residential rate for only 2 of the 6 sites making up the Garden Suburbs and a £70 residential rate for all other areas.

8. As well as the exploration of viability assumptions common to most CIL Examinations, testing the justification for the Council’s residential charging rates with an unsettled emerging local plan would involve consideration of the specific items of infrastructure being ascribed to the different sites which make up the 2 garden suburbs, their assumed cost and assumptions about what affordable housing proportions should apply.

9. The Inspector’s Matters, Issues and Questions for the LDP Examination (published 1 December 2014) for the hearings in January 2015 set out a number of detailed questions on matters relevant to the above. There are no published preliminary findings specifically addressing these detailed matters and thus no assistance in knowing whether the Viability Study was making appropriate assumptions about infrastructure requirements and costs and affordable housing provision.

10. A CIL Examination is not the appropriate vehicle to debate issues which are integral to an emerging development plan. There are unlikely to be present at CIL Hearings all the appropriate parties, nor all the evidence for such a debate. Representations on the CIL are far fewer and from a much narrow range of parties than those made on the LDP. Conclusions on such important matters as appropriate affordable housing proportions in an emerging plan are clearly beyond the Examiner’s remit.

11. As well as identifying those parts of the North Heybridge Garden Suburb to which the nil residential rate applies, the Schedule also defines a built-up boundary for Maldon and Heybridge applicable to other elements of the Schedule. If the submitted LDP was proposing any change to the development boundary for Maldon/Heybridge compared with the adopted local plan that would be a further topic of uncertainty and debate for the CIL Examination. Such a matter would normally be expected to have been resolved through the LDP Examination.

**Conclusion**

12. Given the above, progression of the CIL Examination in advance of much more certainty about the outcome of the Local Plan Examination would be likely to result in an Examination that was more lengthy and complex than is normally the case for CIL Examinations and have an uncertain outcome. For all parties involved it would represent a much less efficient and effective use of time and
public resources than continuing the Examination when the LDP position is much more settled. Depending on the extent to which the evidence was disputed on such matters as infrastructure requirements and costs for different parts of the strategic sites proposed in the plan (the various elements of the *Garden Suburbs*) and the justification for the different proportions of affordable housing sought in policy H1, an Examiner may find considerable difficulty in coming to a firm conclusion on what CIL rates are justified. Accordingly, it is strongly advised that the CIL Examination continues in abeyance. The position should be reviewed when the Secretary of State has come to some conclusions on the LDP Examination and there is a clearer path to eventual adoption.

*Simon Emerson*  
*September 2015*