

Matter 1: Legal Compliance, including the Duty to Co-operate

Issue 1: Whether the Plan is legally compliant

1. a) Has the Plan been prepared in accordance with the Local Development Scheme (SD08)?

No, it bears little resemblance to it.

The SD08 of January 2014 still pre-supposes the relevance of many of the saved policies (and thus continue the previous core strategy of “planning restraint upon further housing development”) which hardly bear resemblance to the LDP preferred options. In terms of consultation it even “especially” relies upon a “ Local Strategic Partnership” (SD08 page 11) which has for long not existed.

b) Is the Plan in general accordance with the Statement of Community Involvement (SD07) and public consultation requirements?

With regard to the SCI (SD07a) it is does not accord.

The SCI is well out of date so that information sources, resourcing and other changes, such as the demise of LSP’s, make it unreliable of function for consultation on the LDP from 2011/12 onwards and particularly so in the earliest inception of the LDP. At earliest inception those we represent complain they were not properly consulted and at subsequent ‘iterative’ stages of the Plan that they (with more petitioners than MDC consultations had respondents) weren’t listened to. Since the short addendum of June 2012 (SD07b) makes it clear that the LPA intended to place considerable responsibility for consultation onto planning applicants/ developers this is not surprising.

c) Have any significant concerns been expressed at any stage by third parties about the Sustainability Appraisals carried out, particularly the final one (SD03)?

SMAG and others had signaled huge concerns right across all the issues, all arising from the inadequacy of process and quality of the evidence base. The Sustainability Appraisal claims “This process has included consideration of alternatives to policies and proposed growth areas. Public consultations undertaken in 2012 and 2013 have helped to further inform the development of the policies.” We would hold that to be not the case.

The SA (p85 item 5) says the policy “..through planning positively and locating development in the most sustainable locations, is expected to consider sustainable transport as a core issue.”

And yet the Council had no evidence on the effects of locating development, on road infrastructure or sustainable transport amongst other policy issues, before determining their preferred options and as far as we can see very little clear evidence on sustainable transport even now. This is true of so many aspects of the so-called evidence base the council has produced. One could go on giving examples of how such mass of words in the background documents to the plan contain so little quality of thought and with developers still left to producing their own partial assessments so even entire neglect of cumulative effects is still a huge risk.

d) Has been the Plan been subjected to an adequate Habitat Regulations Assessment?

Negative effects are inadequately assessed in the evidence base and the means of managing them inadequately described.

SDO3b introduces a fundamental flaw when it includes ‘reducing’ negative effects as ‘mitigating’ them and the Plan reflects this in its approach to adverse effects. The question arises as to whether the mere act of ‘reducing’ adverse effects (“I won’t be doing as much harm as I could have done”) is acceptable. Similarly, though it might ‘mitigate’ some other effects, ‘enhancing’

particular things cannot be said to be 'mitigating' them. In assessing "all such measures" as mitigation measures (as SD03b 10.1.1.0 directs) the distinction between positive effects, negative effects and the degree of the latter, have escaped assessment. There are numerous examples of this in the background evidence and supporting documents.

e) *Has the Plan had regard to the Sustainable Community Strategy?*

In respect of community involvement and consultation and a feeling of having an ability to influence decisions about their area, the Plan has not had regard to this part of the Sustainable Community Strategy. It also fails to address some of the key priorities of the Strategy, for example, paying particular attention to the housing needs of older people.

f) *Has the Plan had regard to national policy?*

As to compliance with national policy I look at the ministerial forward to the NPPF where he says : "The purpose of planning is to help achieve sustainable development. Sustainable means ensuring that better lives for ourselves don't mean worse lives for future generations" and I look at what Maldon will be like for my children if the Plan takes place and I just cannot see the compliance.

g) *Has a suitable assessment been completed under s138 of the Local Government and Public Involvement in Health Act 2007?*

2. *Considering the above, is the Plan legally compliant?*

We fail to see how it should be but we haven't a lawyer or person competent to comment on compliance with law. However, we would question the 'legitimacy' of the LDP, that is to say its validity given the Council's approach to consultation with the local community; a community who were given the impression that there were no feasible options other than the Council's 'preferred options' and that, through the Plan and those options, all sorts of gains would follow, including (see Q11 within the Draft Plan consultation) a new Community Hospital.

MDC have entirely misrepresented the outcome of the Public Consultation in their SD05 Statement. For instance, if you look at para 8.15 (c) they state that 47% of the public agree with the proposed distribution of growth at Maldon. Our calculations based on the raw data obtained from Appendix A of the Report to the P&L Council Meeting on 10th December 2013 actually show that the figure should be 8%. There are also false statements, for instance, para 9.14 of SD05 states that no significant transport and access concerns were identified in the Pre-Submission Local Development Plan consultation.

3. *If the Plan is not considered to be legally compliant, please explain in what areas it does not comply and what needs to be done to make it compliant.*

We do not know how it could be said to comply when there has not been a fair-minded basis to consultation, when there has been a lack of weight given to the wider road infrastructure problems, the threats to social infrastructure, or the threats to the spatial character and identity of both proposed and existing communities; or where delivery of the sort of houses we need, that is to say affordable social and lower cost market housing, even that, is secondary to the aim of getting some plan in place. It is difficult for us to see how the Council's Plan could, at this late stage, be made compliant and now that planning permissions are being invited and granted on the various Plan sites it is difficult to know what practical remedy is possible.

4. If it is considered that public consultation requirements were not properly carried out, please explain where the Council has not complied with either the 2012 Local Planning Regulations or its own Statement of Community Involvement (SD07).

The inspector will make his own judgments but we would consider that the aims of SD07a have not been met - including (part 2 p4) "... open and honest, sharing (of) information ... (and the aim of) seeking to involve all community groups". In addition, from SMAG correspondence with them it appears consultations and co-operation with neighbouring Councils and communities has been little in evidence , and in the case of Hatfield Peverel and Danbury Parish Council most affected by the imposition upon road infrastructure, non-existent.

5. Does the final Sustainability Appraisal (SA) deal adequately with all the reasonable alternatives? The LDP does not give reasonable alternatives nor have the LPA given a chance for fair and public analysis of reasonable alternatives.

6. Have all the reasonable alternatives been identified in the SA?

No, they certainly have not.

We ask answers to the following of both our Council and the Secretary of State:-

1. Is putting a new settlement with the majority of growth in housing provision somewhere in one new location, in a position where there is a greater prospect of producing planning gain and much more feasibility of transport infrastructure improvement, unreasonable?

2. Is it unreasonable to choose such a better option even if it were to take longer?

3. Does the NPPF disallow far more positive plans because they do not deliver growth within its "preferred timescale" and does it allow damaging plans merely because they do fit its "preferred timescale"?

7. Have the significant environmental effects of the reasonable alternatives and the Plan's policies been correctly assessed?

No, they have not.

One could go on giving examples of how such a mass of words contains so little quality of thought. We believe that there are flaws in the assessment of negative effects of the plan and no comparative assessment at all of the effects of reasonable alternatives.

Issue 2: Whether the Duty to Co-operate has been satisfied

1. Having regard to SD06, has the Duty to Co-operate been satisfied, particularly with regard to any strategic highway issues arising from the proposed housing allocations, before the submission of the Plan? Does DOC100 of August 2014 regarding Eves Corner at Danbury indicate that the Duty has been complied with in this respect?

Consideration of road infrastructure has been quite patently retrospective and the issues not at all resolved prior to submission of the plan. Indeed, it is doubtful that sufficient mitigation is possible given the spatial strategy adopted, not without a disproportionate expenditure on altering or adding new road infrastructure and not without compromising the very special character of some of the secondary roads and routes to which people will inevitably resort (or making of them what is dismissively termed 'rat runs').

3. Do representors consider that the Duty to Co-operate has been complied with on an ongoing basis, actively and constructively on strategic policies/matters so far as the preparation of this Plan is concerned? If not, why not, bearing in mind the Council's statements made on the Duty?

No, there has been a historic lack of constructive engagement and active, practical co-operation with neighbouring districts. MDC have not been able to provide any evidence of such engagement on alternative options, or road infrastructure/transport issues and options, despite our repeated requests; nor with the rail operators Abellio or neighbouring districts on options for the rail service which serves the south of the District, despite this being presented in early statements as a vital aim. (See for instance Core Strategy documents such as CS102 of November 2007. Para 6.28 of that document, acknowledges the severity of the issues for the local economy, already evident at that time: "The results of the report commissioned by the (Maldon) Council into the Mid Essex Economic Futures reported that the main weaknesses of the Mid Essex economy is "increasing congestion".

Issue 3: Whether the masterplan Supplementary Planning Documents (SPD) can be used for the purposes proposed by the Council, and whether their uses and purposes are clearly and effectively set out in the Plan

11. Regulations 5 and 6 of the Local Planning Regulations 2012 set out what should be in a local plan and therefore what should not be in a SPD. In the light of this [particularly Regulation 5(1)(a)(iv)], should the information proposed to be in the masterplan SPDs be in the Plan, either in whole or in part?

We consider that, especially given the close call between what is expected/claimed to be gained from the spatial options chosen and the viability of those particular options, the Plan as legally constituted will need to incorporate more information than it does at present.

12. Does the Plan set out the basic policy 'hooks' for what should be dealt with and contained in each SPD? Do the Council's suggested modifications (Refs 052 053 and 054 Para 2.45 (of Policy S3) in SD04b) to make the masterplans illustrative as a guide for developers and to be in accordance with the Plan's development principles resolve the concern?

We consider that the modifications, do not resolve concerns over whether the Plan Policies actually ensure that the expectations represented in SPD's (arising as they appear to be doing from information used by developers to 'consult' and promote their sites) will be realisable. For instance various health and community uses as well as housing mix/types; particularly a mix of market housing that includes the smaller 2/3 bed dwellings for which there is an acknowledged crucial need.