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# Maldon District Local Development Plan 2014 – 2029

Examination in Public January 2015 – Legal Compliance  
and Housing Policies

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Response to Matters, Issues and Questions raised by  
Inspector David Vickery

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

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Andrew Martin – Planning  
Intermodal Transportation Limited  
WSP

on behalf of

landowners, Messrs. Hughes and Sandy

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Land to the East of Broad Street, Green Road and North of Lofts  
Farm Drive, Heybridge (known as 'Lofts Farm').

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January 2015



## 1.0 MATTER 1 : LEGAL COMPLIANCE, INCLUDING THE DUTY TO CO-OPERATE

### **Issue 1 : Whether the Plan is legally compliant.**

1 a-g require the Council to respond to questions from the Inspector on matters of legal compliance.

*1c. Have any significant concerns have been expressed at any stage by third parties about the Sustainability Appraisal carried out, particularly the final one (SD03).*

In its response to this question we expect the Council to identify representations made by AM-P in relation to Lofts Farm. Significant concerns were made about the SA in representations dated October 2013 to the Draft Plan for Consultation, and again in March 2014 to the Pre-Submission Local Development Plan.

*1f. Has the Plan had regard to National Policy?*

Although it is not anticipated that the Council itself will find any areas of non-compliance with National Policy, we contend that the plan fails to meet paragraph 47 of the National Planning Policy Framework (NPPF) requiring that, in order to achieve a significant boost in housing supply, Local Plans should meet the full Objectively Assessed Needs for housing (OAN) for market and affordable housing in the Housing Market Area (HMA) as far as consistent with the policies in the NPPF. The Plan fails to meet the requirements of the SEA Regulations as further interpreted by subsequent case law.

*2 Is the Plan legally compliant?*

*3 If not what needs to be done to make it compliant?*

The Maldon Local Plan is not supported by an adequate Sustainability Appraisal and there has therefore been failure to comply with the EU Directive 2001/42/EC and the Regulations made to implement it. In our opinion, the plan should be found unsound or at least suspended if the Inspector considers that there is sufficient time for the Council to rectify the situation to allow for the preparation of a thorough and effective SA that justifies the preferred strategy and takes into account the proper testing of alternatives for growth.

*4 Public consultation requirements and whether the Council has complied with the 2012 Local Planning Regulations/its own Statement of Community Involvement.*

The Council's Statement of Community Involvement is dated 2007 and largely relates to consultations in respect of the previous local plan that were undertaken in 2005. This is out of date and does not set out clear guidance on public consultation required in respect of Development Plan Documents. The Addendum dated 2012 relates solely to the consideration of planning applications.

Under the terms of the SEA Directive the public have not been given an effective and early opportunity, within appropriate timeframes to express their opinions on the emerging plan and the Sustainability Appraisal Report (SAR). With reference to case law in NANT v Suffolk Coastal DC, Mrs Justice Patterson states that "there should be an integrated process whereby the environmental report assesses the emerging plan and the subsequent iteration of that plan has regard to the contents of the environmental report and public consultation on both documents"... "the objective of the Directive can only be met properly by taking into account an environmental report on the effects of the policies in a draft plan as the policies develop". This has not been the case in Maldon District.



Representations submitted in October 2013, by AM-P set out in section 2.0 how the identification of a growth strategy and proposed masterplan areas in Maldon was the result of political influence and not a process informed by the SA or evidence based documents. There has not been a full or effective programme of public consultation in the preparation of the Maldon Plan.

*5. Does the final SA at SD03 deal adequately with all the reasonable alternatives?*

SD03 does not represent a full SA. It takes a broad-brush approach and confines itself to the testing of individual policies against key sustainability objectives. It fails to describe and evaluate the likely significant effects on the environment of implementing the plan, and reasonable alternatives. It does not provide a transparent audit trail of the endorsement/rejection of locations for growth. Paragraph 7.1.2 identified by the Inspector, confirms that the SA principally comprises an assessment of policies, without any subsequent analysis of candidate sites for growth.

Transport Comments - (ITL). Paragraph 7.2.4 of the SAR indicates that the alternatives considered would not achieve as many benefits to the District as the proposed policies and that they do not represent as sustainable an approach as the submitted policies. The SA does not deal adequately with the reasonable alternatives because, we consider, that further evidence based assessment would show that a strategy to reduce the housing allocations in Burnham and the rural areas and relocate these dwellings in and around Maldon Town would be more policy compliant.

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

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

There is no transparent audit trail of the endorsement of land to the west of Broad Street Green Road and rejection of land to the east (Lofts Farm). The broad location of North Heybridge meets policy objectives in terms of identifying a sustainable wider area for growth but the environmental effects of specific individual sites has never been undertaken.

Ongoing discussions with officers of the Council and various members has shown considerable support for large scale development at Lofts Farm and its ability to meet a number of SA objectives, including the provision of social benefits such as affordable housing provision and improvement to education, health and community services and facilities. There are also benefits in developing land at Lofts Farm in terms of infrastructure provision, relating to flood risk and drainage. Many of the social and infrastructure requirements/benefits are not achievable by other sites at North Heybridge alone, but could be delivered if the critical mass of development at this location were to be increased. The Statement of Common Ground prepared in respect of the North Heybridge Garden Suburb (CED10, Appendix 11), is vague and non committal. In addressing a key concern of the Inspector relating to "sufficiency of resources to deliver key infrastructure" the vague nature of this position statement is demonstrated in the following statement which appears in bold print: **"Subject to appropriate flexibility being incorporated into LDP policies to consider the viability of development, the parties agree that work to date, and indeed progress to date, demonstrates that sufficient public and private sector resources exist to implement the NHGS pursuant to planning applications being approved."**

In December 2014 Inspector Roy Foster found the Uttlesford Local Plan to be unsound. One of the key reasons was that a full SA needed to be undertaken to ensure that the requirements of the Regulations and the principles established by case law are built into the process transparently from the outset. There are parallels to be drawn between the Inspector's findings at Uttlesford and the



emerging plan for Maldon, as they relate to the requirement for a full SA and its need to meet the Regulations and provide a transparent audit trail that sets out the reasoning behind the adoption/rejection of alternative options for growth.

#### Transport Comments – (ITL)

6. The SA (SD03b) does not give sufficient weight to the importance of transport sustainability. Paragraphs 7.3.2 and 7.3.6 reproduced below make no distinction between the negative impacts of greenhouse gas emissions for the overall strategic plan (including Burnham) when compared to the Burnham strategic growth plan in isolation.

#### *S2 Strategic Growth*

*7.3.2 Overall the policy has a positive impact and is broadly in line with the majority of the SA Objectives, which is appropriate as it is a strategic policy which supports the achievement of other policies within the Plan. This policy is likely to result in moderate negative impacts in the medium and long term in relation to water resources and greenhouse gases, and the use of natural resources which relate to the delivery of the development (Objectives 8, 11 and 13 respectively). However, the increase in housing is likely to result in a more positive impact on housing mix. Appendix C details the assessment of alternatives considered for this policy as a result of consultation on the 2013 draft LDP*

#### *S6 Burnham-on-Crouch Strategic Growth*

*7.3.6 This policy sets out the requirements for development in the garden suburbs at Burnham-on-Crouch. It is very similar to Policy S4, although given the location of the development in the District there is likely to be a minor positive impact on rural isolation (Objective 4). The policy also includes measures to protect the existing townscape at Burnham-on-Crouch and is likely to have a moderate positive impact in this respect (Objective 6). Inclusion of the need for detailed ecological surveys to accompany development proposals in July 2013 improved protection for biodiversity and resulted in an increased positive assessment (Objective 6) compared with previous SAs. Overall, the Policy is positive, although there is likely to be negative impacts on greenhouse gases and natural resource consumption as a result of development (Objectives 11 and 13, respectively).*

Inevitably we accept that any new development will bring new traffic into the District which would increase greenhouse gas emissions per se, but spatially within the District there is the ability to reduce emissions further when reviewed against the current LDP strategy. We therefore submit there is a distinction to be made and, by concentrating more housing to the Maldon and Heybridge areas, a lesser negative impact would result.

(7). We consider that Transport Sustainability is an important factor in terms of spatial considerations as outlined in paragraphs 30 and 34 of the NPPF where under chapter 4 ‘Promoting Sustainable Transport’ it states:

*30. Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. In preparing Local Plans, local planning authorities should therefore support a pattern of development which, where reasonable to do so, facilitates the use of sustainable modes of transport*

*34. Plans and decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes*



*can be maximised. However this needs to take account of policies set out elsewhere in this Framework, particularly in rural areas.*

The above requirements of NPPF are essentially embodied in policy S1 of the draft LDP although the emphasis given to the reduction of greenhouse gases arising from travel patterns within the LDP policies appears not to be given the primacy that we take from the NPPF guidance.

We have hitherto submitted a high level assessment of the likely number of additional car miles travelled per household for commuter trips from Burnham when compared to Heybridge. It is calculated that on average each household would generate 16% less car miles if located in Heybridge which is notable. Reference to the Intermodal Transportation Ltd's report 'Spatial Sustainable Transport Considerations' submitted in 2013 to the Council, as part of our Clients' representations (Appendix 3), provides the evidence base upon which this basic conclusion has been drawn.

We submit that the Council should have undertaken a spatial car borne travel assessment to quantify consequential emission impacts of various spatial alternatives which would then have pointed to a plan which concentrates nearly all the planned housing in the Maldon and Heybridge suburbs, as the best sustainable strategy to minimize environmental impacts. This can be undertaken using census data. Intermodal Transportation Ltd was only able to the disaggregated trip end data using 2001 census data available in 2013 but, any assessment undertaken now could use more recently published 2011 data sets. Relative to the cost of producing the various evidence based and SA assessment information to date, in preparing the draft plan, the cost of this exercise would be modest.

Without this assessment the Plan is not legally compliant.

## **2.0 ISSUE 2 : WHETHER THE DUTY TO CO-OPERATE HAS BEEN SATISFIED**

### Transport Comments – (ITL)

(8) Based upon the information and on-going work associated with the A414 corridor and in particular Eves Corner, we have no further update from MDC to comment upon the preferred mitigation measures to ameliorate the impact of the LDP allocations.

We consider that even if an agreed package of works has not been identified for the forthcoming Examination, sufficient engagement has been undertaken to satisfy the duty to cooperate requirements.

Prime facie, the transport infrastructure has to be managed in a variety of ways to minimize additional growth in trip ends resulting from substantial housing growth in the South East. NPPF recognises that it would not be possible to facilitate this growth without the traffic impact being felt and at paragraph 32 states:

*32. All developments that generate significant amounts of movement should be supported by a Transport Statement or Transport Assessment. Plans and decisions should take account of whether:*

- *the opportunities for sustainable transport modes have been taken up depending on the nature and location of the site, to reduce the need for major transport infrastructure;*



- *safe and suitable access to the site can be achieved for all people; and*
- *improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.*

We take from this that to achieve a ‘nil detriment’ impact is unlikely to deliver any LDP plan and thus growth and some additional congestion and delay is inevitable. However, cost effective mitigation measures should be identified and put in place.

Further clarification in relation to highway capacity was given by Keith Holland of PINS at a meeting held between key planning officers/Councillors of MDC and the Planning Inspectorate on 8<sup>th</sup> April 2013; the position, set out by PINS, supports our assertion that since publication of the NPPF guidance, Central Government does not place unduly high emphasis on traffic impact, per se, recognising this would help to deliver housing allocations nationally. Minutes of the meeting record the following opinion of Mr. Holland:

*In terms of local constraints, Mr. Holland believes that the Council ‘will struggle’ if it wants to rely on highways constraints and/or landscape value to justify a lower housing target. When pressed on this subject and made aware of the potential impact of this stance on public opinion, his answer was very clear that the scale PINS were putting on highways considerations was very modest and the Government has placed a higher priority on building houses than the impact of delays on the road. He pointed out that no LPA so far has managed to lower their housing target using highway/transport constraints as their primary argument.....*

If a Statement of Common Ground has not been agreed between Chelmsford City Council and Maldon District Council for the EIP, we consider that sufficient work has been undertaken to identify the main network constraints in neighboring Authorities that would attract appropriate funding to minimize the impact of the Maldon Plan influences. Hence, we submit that the Duty to Cooperate requirement has been satisfied in relation to transport matters.

#### *10. Whether the Duty to cooperate has been complied with on an ongoing basis?*

In considering strategic allocations for new development in the District the Council has not properly liaised with key stakeholders/public bodies such as the EA and HA. A review of flood risk and drainage and sewerage issues is an important consideration. NPPG paragraph 014 ID 12-014-20140306 addresses the evidence needed to support a Local Plan. This should be focused tightly on supporting and justifying the particular policies in the local plan. Evidence of co-operation and consideration of different options for meeting development needs are stated to be key to this process. The PPG advises that evidence needs to inform what is in the Plan and shape its development rather than being collected retrospectively. Land at Lofts Farm, if included in the broad location for growth at North Heybridge can meet important drainage requirements and address matters of flood risk associated with land to the west of Broad Street Green Road. Such a solution has never been properly explored and in the absence of sufficiently clear proposals for the NHGS in the emerging plan, this additional land to the east of the road merits consideration and inclusion. Recent discussions with officers of the Council demonstrates that inclusion of Lofts Farm in the wider broad location can also address affordable housing and specialist housing needs, education and health requirements. Discussions with the Council have addressed the needs for a sixth form college and medical Hub to specialize in stroke rehabilitation.

The Plan does not comply with government guidance in the PPG on the preparation of Local Plans as set out in paragraph 081 ID 12-018-20140306. This states that careful attention should be given to



providing an adequate supply of land, identifying what infrastructure is required and how it can be funded and brought on stream at the appropriate time. Early discussion with infrastructure and service providers is said to be important to understand their investment plans and critical dependencies. This has not been done in Maldon. The Position Statement for NHGS refers to ‘the principles of a preferred solution to strategic flood alleviation having been agreed subject to further assessment and detailed design. The statement is confusing in stating that various studies and assessments have been undertaken by various parties on their own yet implying a measure of agreement. There are many statements claiming a high level of certainty and agreement but no detail to back this up. The whole development appears to be based on sufficiently flexible policies in the Plan to ensure viability. The position statement for NHGS does not demonstrate that the site is actually deliverable.

**3.0 ISSUE 3 : WHETHER THE MASTERPLAN SUPPLEMENTARY PLANNING DOCUMENTS (SPD) CAN BE USED FOR THE PURPOSES ARE CLEARLY AND EFFECTIVELY SET OUT IN THE PLAN**

*11. In the light of Regulation 5 should the information proposed to be in masterplan SPDs be in the Plan, either in whole or in part?*

The Plan’s allocation policies do lack the level of detail required by government regulations and policy. The position statement for the NHGS exemplifies this point in its vagueness regarding the delivery of new homes and related infrastructure. All that the Plan and its broad brush SA demonstrates at this stage is that north Heybridge represents a sustainable location for long term and large-scale growth. The precise detail as to where and how this will be delivered is yet to be decided. We contend that the local plan should identify a broad location for growth that includes land east and west of Broad Street Green Road, that in achieving a critical mass of development demonstrates how vital infrastructure can be provided.

To rectify this the Plan should identify a broader location for growth at North Heybridge to be the subject of an AAP or alternatively a neighbourhood plan. The latter would allow further public consultations and involvement in the master planning process. Although this is not ideal and not a preferred by Government guidance, in the circumstances there is no other alternative except to find the Plan unsound.

*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 in SDO46) to make the masterplans illustrative as a guide for developers and to be in accordance with the Plan’s development principles resolve the concern?*

It is considered that the proposed SPDs setting out Draft Strategic Masterplan Frameworks for each Garden Suburb are not in accordance with Government advice or case law. The NPPF expects that in most cases one overall local plan should be produced for each district. In this case sufficient detail is required in each allocation to guide planning applications;

“where sites are proposed for allocation, sufficient detail should be given to provide clarity to developers, local communities and other interests about the nature and scale of development (addressing the ‘what, where, when and how’ questions)” (paragraph 010 Ref ID: 12-010-20140306 NPPG).



While the NPPF states that additional Local Plans can be produced, for example a separate site allocations document or AAP, there should be a clear justification for doing so. In this case, with the identified need for masterplans to provide appropriate frameworks for the Garden Suburbs, and the failure of MDC to consider other reasonable alternatives in North Heybridge, there is a clear justification for preparation of an AAP or, alternatively a neighbourhood plan. A SPD does not provide sufficient public engagement to shape development at the community level compared with these other forms of plan. Proposed policies currently fail to give sufficient certainty – too much is left for determination via the SDP.

#### **4.0 ISSUE 4 : WHETHER THERE ARE ANY SUGGESTED MAIN MODIFICATIONS**

We concur with the view of the Inspector that the Council is proposing a number of main modifications and that these should be specified accordingly.