

**Maldon District Local Development Plan
Inspector: Simon Berkeley BA MA MRTPI**

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By email only

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Dear Mr Tofts,

Examination of the Maldon District Local Development Plan

As you know, I have been appointed to examine the Maldon District Local Development Plan. In a separate letter which I have addressed to the Council and to all other participants, I have explained the present position and my intended way forward. This letter sets out a number of matters on which I am seeking updates and clarifications from the Council.

Provision for Travellers

It is clear from his letter dated 6 March 2016 that the Secretary of State regards Policy H6 to be not consistent with national policy. That letter also refers to the agreement of the Council's Planning and Licensing Committee to use the Essex Gypsy and Traveller and Travelling Showpeople Accommodation Assessment of 2014 [EB007b] (the new GTAA) to inform future plan-making.

I note that the new GTAA concludes that there is a need for 17 new pitches between 2013 and 2018, and for 32 between 2013 and 2028. Does the Council propose that these figures should be included within Policy H6 as a clear plan requirement? If not, how would the Council suggest that the inconsistency of Policy H6 with national policy should be remedied? I would be grateful for concise and unambiguous confirmation of the Council's position on this issue.

In addition, I understand that the Council has undertaken a 'call for sites' exercise inviting people to nominate land to provide Gypsy and Traveller accommodation. Does the Council aim to include any sites identified through this process in the Local Development Plan presently under examination? Please

provide an update on this, along with an explanation of the Council's intentions for delivering Gypsy and Traveller sites.

The Housing Market Area

The Council takes its administrative area to be the Housing Market Area (HMA). It appears that the SHMA Update 2013 [EB010e] and the 2014 SHMA [EB010f] support this stance, to some extent at least.

However, this position is disputed by other participants. Some consider that the HMA should be a wider area – that Maldon falls within a Colchester HMA, also involving Colchester, Chelmsford, Tendring and Braintree. It is argued that from the Council's figures, the level of commuting for work is such that the HMA should be more widely drawn.

I understand from the hearings that the other aforementioned authorities have commissioned a study to establish the most appropriate HMAs for their areas. Maldon has not been involved in this largely, as I understand it, because the Maldon District Local Development Plan had recently been, or was about to be, submitted for examination.

On this point, I am not wholly clear about the Council's stance. Considering the level of commuting, does the Council, on reflection, now consider that it would be more appropriate for future plan-making to re-consider the HMA? If so, should an early review of the Local Development Plan be required to address this matter? I would be grateful for clarification of your view on this issue.

Highway and school capacity

As I understand it, there is no evidence to demonstrate that development beyond that allocated to Maldon and Heybridge will not have severe impacts on the highway network, and there is no evidence in relation to the capacity of The Plume School to accommodate such further growth. Both the highway and local education authorities have expressed concerns in these respects. Could you confirm whether my understanding is correct?

At the hearing, the question of whether or not Policy S2 should be modified to include a cap on further housing development in Maldon and Heybridge was debated. Please clarify the Council's position on this.

Turning to Burnham-on-Crouch, I understand that during the examination the evidence concerning primary school capacity indicated that no more than the 450 homes proposed through the strategic allocations could be accommodated. However, since then, a joint primary education capacity statement [EWT-M05-01] has been produced. From my reading, this appears to indicate greater capacity. Is my understanding of this all correct and what is the Council's view?

Does the Council consider there to be a need to set a cap on housing development in Burnham-on-Crouch?

From the evidence presented, I am not wholly clear about the baseline used to establish the impacts of the strategic allocations on highway and school capacity. Please can you confirm whether any developments with planning permission have been taken into account and if so provide details.

It is also necessary for me to fully understand the difference between the baseline position used and present circumstances – that is, the position to which the strategic allocations would be added. To that end, I would be grateful to know whether any further developments which might have a bearing on highway and/or school capacity have been granted planning permission in or around Maldon, Heybridge or Burnham-on-Crouch since the hearings. If so, please provide me with details about the developments concerned and the likely effects on highway and school capacity.

The Reserve Sites

The hearings also considered the question of whether the Reserve Sites are justified by evidence in relation to highway and school capacity. As a matter of fact, is there any evidence that considers the effects on highways and schools if both the strategic allocations and the Reserve Sites all come forward? If not, should the Reserve Sites be deleted from the plan? If the Reserve Sites should be deleted, should they be replaced by other contingency measures?

For the avoidance of doubt, have the Reserve Sites and the alternative sites considered been subject to sustainability appraisal? If not, they should now be assessed against the sustainability appraisal and this work should be published.

Affordable housing

An Additional Viability Note [EWT-M03-01] has been prepared following the hearings, at the previous Inspector's request. This extra work was considered necessary for three reasons:

- because it appeared that the site boundaries appraised did not match fully those of the allocations;
- to ensure that the final draft plan requirements are fully reflected; and
- to provide a recommendation for the affordable housing target at the Heybridge Garden Suburb given the suggested removal of the requirement for a flood alleviation scheme.

As I understand it, this latest viability evidence now properly reflects the proposed allocations and fully reflect the plan's policies. In relation to Sites S2 (d) and (e), it provides new appraisals on the basis of the schemes with, and alternatively without, the flood alleviation scheme which Policy S4, as submitted,

requires they provide. I would be grateful for your confirmation of whether or not my understanding is correct.

Considering this new evidence, are any changes needed to Policy H1? In particular, should it be modified to require 30% affordable housing from Site S2 (a) rather than 40%, and should the affordable housing requirement for Site S2 (d) be altered from 25% to 30%? If not, how are the affordable housing requirements in Policy H1 justified in relation to these two sites? If the Council considers that such modifications to Policy H1 should be made, I ask that a position statement be prepared explaining the effect of this on meeting the need for affordable housing in the district.

At the time of the previous hearings, the outcome of the High Court's decision in the *West Berkshire*¹ case, concerning the Written Ministerial Statement of 28 November 2014 and the associated alterations to the Planning Practice Guidance (PPG), was not known. The Declaration Order issued on 4 August 2015 confirms that the policies in the Written Ministerial Statement must not be treated as a material consideration in development management and development plan procedures and decisions, or in the exercise of powers and duties under the Planning Acts more generally. The PPG has been updated accordingly. The Secretary of State has been granted leave to appeal the judgement.

In the light of this, I would welcome confirmation of the Council's stance in relation to Policy H1's site size thresholds. Are they supported by the viability evidence? Keeping in mind that the Secretary of State has been given leave to appeal, does the High Court's decision in *West Berkshire* have any bearing?

The detail given about the allocations

The previous Inspector raised issues about the content of the Garden Suburb masterplans. Regulations 5 and 6 of the 2012 Regulations² prescribe, in effect, that the following is a Local Plan, rather than any form of supplementary planning document:

"(a) any document prepared by a local planning authority ... which contains statements regarding one or more of the following –

- (i) the development and use of land which the local planning authority wish to encourage during any specified period;*
- (ii) the allocation of sites for a particular type of development or use;*
- (iii) any environmental, social, design and economic objectives which are relevant to the attainment of the development and use of land mentioned in paragraph (i); and*

¹ *West Berkshire DC & Reading BC v Secretary of State for Communities and Local Government* [2015] EWHC 2222 (Admin)

² The Town and Country Planning (Local Planning) (England) Regulations 2012

(iv) development management and site allocation policies, which are intended to guide the determination of applications for planning permission;

(b) where a document mentioned in sub-paragraph (a) contains policies applying to sites or areas by reference to an Ordnance Survey map, any map which accompanies that document ..."

The issue here is that much of the two draft masterplans appears to fall within one or more of the above. For example, they include statements about land uses within the draft masterplan areas, and land use plans illustrating a spatial distribution of uses within sites. While some of this content can be discerned from the Local Development Plan, much of it cannot.

I am not clear about the Council's stance on this issue, and I would be grateful if you could explain it to me. Should any of the draft masterplan content be within the Local Development Plan in order to meet the Regulations? Moreover, should any of the detail in the masterplans be in the Local Development Plan to ensure its effectiveness?

Employment

Policy E1 says that:

"A minimum of 2,000 net additional jobs will be created in the district by 2029 through the regeneration, modernisation and expansion of existing employment sites, and through the provision for new employment sites at the strategic allocations and South Maldon Garden Suburbs and other high quality and sustainable locations."

To this end, it identifies a number of specific existing employment sites to be reserved for that purpose. This amounts to 94.21 hectares of land. It also allocates three sites for employment use. An extension to Burnham Business Park of 3.4 hectares (Site E1(q)) is allocated. Site E1(p) is 0.5 hectares and forms part of the Maldon Garden Suburb.

Further land of 4.5 hectares at Wyke Hill (south), Maldon, apparently within the Maldon Garden Suburb, is also allocated. However, so far as I can see, the area of land is not illustrated geographically on the Policies Map. Policy E1 says that the detailed allocation – that is, the precise site location and boundaries – are to be determined as part of the masterplan for the Garden Suburb. But it seems to me that that is not permitted under Regulations 5 and 6 of the 2012 Regulations which I have quoted above. In short, land allocations can only be made in Local Plans. I would be grateful to know how the Council considers this problem should be remedied.

More fundamentally, I am not wholly clear about the need for land or floorspace for economic development over the plan period – that is, the new

land/floorspace necessary to support the 2,000 net additional jobs planned for. Policy E1 does not set out a specific employment land requirement. While it allocates 8.4 hectares of land, it is not clear whether the Council considers this to be the full extent of new land necessary. One might assume not, given that the Site Allocations Development Plan Document that the Council is preparing will include rural employment sites.

I would be grateful if the Council would prepare a concise paper addressing this. The paper should confirm the Council's view about the amount of new land needed for employment purposes over the plan period, and the sources of supply, including the supply to be delivered through the Site Allocations Development Plan Document. It should also include disaggregation by sector/land use type.

I note the content of the Employment Evidence and Policy Update (July 2015) [EB102a]. Does the Council now rely on this as the primary source of evidence in relation to economic development matters?

The Update will be subject to more detailed scrutiny through hearings in due course. However, I would be grateful for clarifications on the following points.

The Update's baseline forecast identifies a need for 370 jobs in A1 retail. This is based on employment projections and differs in approach to the new Maldon Retail Study (July 2015) [EB103]. However, it takes into account the retail evidence, particularly in relation to floorspace requirements. Noting substantial variation in floorspace per worker ratios across the retail sector, the study estimates a floorspace requirement of between 7,500 to 8,300 sqm using town centre/superstore densities, and 39,500 sqm based on retail warehouse densities. It says that this lies comfortably within the range of 13,400 to 21,500 sqm identified in the retail study evidence.

This is based on the notion that the new retail study concludes that between 13,400 sqm and 21,500 sqm of convenience and comparison retail space will be required over the period to 2029. However, I do not recognise those figures. The conclusions of the new retail study suggest rather lower floorspace requirements. Combining the comparison and convenience capacity identified in the retail study leads to an overall range of 6,200 – 9,800 sqm. Clearly, this is towards the bottom of the range estimated in the Employment Update. Much depends on the type of retailing involved. For example, bulky goods retailers achieve lower sales densities. But, from my reading, this has been taken in to account in the new retail study.

My concern here is that the new employment and retail studies appear to be inconsistent. I would be grateful if you could provide clarification on these points, and explain the apparent discrepancies.

I note that the Employment Update considers the Strategic HMA to be Chelmsford, Brentwood, Braintree, Colchester and Maldon. As discussed above, so far as I am aware, that does not reflect the Council's current position. I cannot tell for certain what effect, if any, this has on the evidence. If it relates only to benchmarking, which appears to be the task in Section 3.1 of the report, then that may present no problem. Nonetheless, I would be grateful for your clarification on this.

Retail

In response to the previous Inspector's concerns, Maldon Retail Study (July 2015) [EB103] has been produced. It provides an assessment of needs and capacity for the period to 2029. It also reviews the current performance of Maldon town centre, Heybridge district centre and Burnham town centre. It draws conclusions on the future demand for retail floorspace and makes recommendations in relation to the future strategy for the district's town and district centres in order to help safeguard future vitality and viability.

The study concludes that there is capacity for 3,400 to 4,800 sqm of convenience space and between 2,800 and 5,000 sqm of comparison retail space by 2029. It recommends an amendment to Policy E2 on this basis. It also recommends that the impacts of the Aquila development be closely monitored for two years after its opening and that the Council review the retail evidence, and Policy E2 if necessary, at that time.

I would now welcome from the Council confirmation of whether or not the Council relies on the evidence of the new retail study. Assuming it is to be relied on by the Council, I ask that main modifications be drawn up and fully explained in a concise paper. Clearly, such main modifications should address the previous Inspector's concerns, which I share, and should set out what, if any, proposals for retail development are needed, where they will go, when they will be provided by, and how they will be delivered. If relevant, I will need to know what reasonable alternatives have been considered and why the chosen options have been selected. It is highly likely that further sustainability appraisal work will need to be carried out to inform this process.

Main modifications

Main modifications have been put forward at various points during the examination thus far and those advanced at the time were discussed during the previous hearings. However, numerous modifications were left for the Council to consider further and to produce draft wording.

I would now be grateful if you would produce one, fully comprehensive schedule of the main modifications the Council considers necessary to address issues

previously discussed and those set out in this letter. It is essential that I have full clarity on this at the earliest opportunity.

Overall and looking forward

Overall, there are a number of issues that must be addressed. I recognise that some of the points raised may take some time to deal with fully, although I anticipate that the Council may have progressed matters since the previous hearings. Either way, I ask that you contact me soon to let me know your next steps and the likely timescales involved.

I trust that you find this letter helpful. Please rest assured that I will do all I can to assist, and to give the Council every opportunity to address these issues.

I look forward to hearing from you at the earliest opportunity in relation to your view about the next steps and timescales involved.

Yours sincerely

Simon Berkeley

Inspector