

# **LANGFORD & ULTING NEIGHBOURHOOD DEVELOPMENT PLAN 2014-2029**

**SUBMISSION VERSION**

**A Report to Maldon District Council of the Examination  
into the Langford & Ulting Neighbourhood Development  
Plan**

by Independent Examiner, Peter Biggers BSc Hons MRTPI

Argyle Planning Consultancy LTD  
April 2016

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## Summary and Overall Recommendation

0.1 Following my examination of the Langford and Ulting Neighbourhood Plan (LUNP), including a site visit to the Neighbourhood Area on 10 March 2016, it is my view that the LUNP reflects the views of the community and sets out a clear vision and suite of policies and proposals for the Neighbourhood Area.

0.2 However my report highlights a number of areas where I consider the wording of the plan as submitted is not wholly in accordance with one or more of the Basic Conditions.

0.3 I have therefore recommended a number of modifications to the Plan which should be made before the plan can proceed to Referendum. These are intended to ensure that first and foremost the Plan can meet the Basic Conditions.

0.4 In proposing the modifications I have tried to ensure that the integrity and value of the LUNP and its vision is retained and that the intention of neighbourhood planning, where the community's wishes should be central to the plan, is honoured. The exception to this is my finding in respect of Policy 9. I could not support the policy remaining in the plan in its current form and whilst it may be possible as outlined to clarify that its intention is really a rural exceptions policy, care would need to be taken that the policy was sufficiently close to the original intention to avoid the need for further consultation.

0.5 It is possible that Langford and Ulting Parish Council as qualifying body will be disappointed with the findings. However by its nature the examination has to be rigorous. Any criticism is not at all to undermine the significant community effort that has gone into the plan. Rather the purpose of the examination is to ensure that the Neighbourhood Plan is as robust as possible and that it can play its part in planning decisions and managing change in the future in an effective way.

0.6 In addition to the recommended modifications it should also be noted that there will be a number of consequential changes to the text and referencing that will be needed as a result of making the modifications. It will also be necessary to ensure all document referencing is up to date. For example all referencing to the Maldon District Local Development Plan will need to be updated as the expectation is that the plan will have progressed further by the time any referendum takes place. I have not highlighted all such changes, but these are matters that will need remedying in the final version of the Plan.

0.7 Subject to the recommended modifications in the report being completed I am satisfied that the LUNP:

- has regard to national policies and advice contained in guidance issued by the Secretary of State;
- will contribute to the achievement of sustainable development;
- is in general conformity with the strategic policies of the development plan for the area;

- does not breach, and is compatible with European Union obligations and the European Convention of Human Rights.
- is not likely to have a significant effect on a European Site either alone or in combination with other plans or projects.

0.8 The LUNP also complies with the legal requirements set out in Paragraph 8(1) of Schedule 4B to the Town and Country Planning Act 1990.

0.9 With the modifications in place the Langford and Ulting Neighbourhood Plan will meet the Basic Conditions and can proceed to a Referendum. When that takes place I also recommend that the Langford and Ulting Parish Council administrative boundary is taken as the area for the Referendum.

**Peter Biggers**  
**15<sup>th</sup> April 2016**  
**Argyle Planning Consultancy Ltd**

## 1. Introduction

### 1.1 Background Context

1.1.1 This Report provides the findings of the Examination into the Langford and Ulting Neighbourhood Plan (referred to as the LUNP throughout this report).

1.1.2 The LUNP was produced by the Langford and Ulting Parish Council (LUPC) in consultation with interested parties and local stakeholders.

1.1.3 The Langford and Ulting Neighbourhood Area equates to the administrative area of the Parish.

1.1.4 The villages of Langford and Ulting and their surrounding countryside lie a few miles to the north west of the market town of Maldon and the Blackwater estuary. Langford is the larger village with some limited services – including church (incorporating a small shop), pub, village hall and the museum of power whilst Ulting is a more dispersed settlement comprising small groups of houses. Both villages lie in an attractive area of low lying, tranquil countryside dominated by the water landscapes of the River Blackwater and the Chelmer and Blackwater Navigation. The villages are principally residential but two large commercial sites Oval Park and Ernest Doe's are located on the B1019 road corridor linking Hatfield Peverel and Maldon and which runs through the central part of the plan area.

1.1.5 This Examiner's Report provides a recommendation as to whether or not the LUNP should go forward to a Referendum. Were it to go to Referendum and achieve more than 50% of votes cast in favour of it, then the LUNP would be '**made**' by Maldon District Council. The LUNP would then be used to determine planning applications and guide planning decisions in the Langford and Ulting Neighbourhood Area.

### 1.2 Appointment of the Independent Examiner

1.2.1 I was appointed by Maldon District Council, with the consent of LUPC, to conduct the examination and provide this Report as an Independent Examiner. I am independent of the qualifying body and the Local Authority. I do not have any interest in any land that may be affected by the LUNP nor do I have any professional commissions in the area currently and I possess appropriate qualifications and experience. I have planning and development experience, gained over 35 years across the public and private planning sectors and am a Member of the Royal Town Planning Institute and a member of the National Panel of Independent Examiners Referral Service run by the Royal Institute of Chartered Surveyors.

### 1.3 Role of the Independent Examiner

1.3.1 It is the role of the Independent Examiner to consider whether a neighbourhood plan meets the "Basic Conditions." The Basic Conditions are set out in paragraph 8(2) of

Schedule 4B to the Town and Country Planning Act 1990 (TCPA) as applied to neighbourhood plans by section 38A of the Planning and Compulsory Purchase Act 2004 (PCPA). In order to meet the Basic Conditions<sup>\*</sup>, the making of the BHNP must:

1. Have regard to national policies and advice contained in guidance issued by the Secretary of State;
2. Contribute to the achievement of sustainable development;
3. Be in general conformity with the strategic policies of the development plan (see Development Plan Status below) for the area.
4. Not breach, and must be otherwise compatible with, European Union (EU) and European Convention on Human Rights (ECHR) obligations.

1.3.2 Regulation 32 of the Neighbourhood Planning (General) Regulations 2012 (as amended) sets out a further basic condition for Neighbourhood Plans in addition to those set out in primary legislation and referred to in the paragraph above - that is:

5. The making of the Neighbourhood Plan is not likely to have a significant effect on a European Site (as defined in the Conservation of Habitats and Species Regulations 2012) or a European Offshore Marine Site (as defined in the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007) either alone or in combination with other plans or projects.

1.3.3 In examining the Plan, I am also required, under the legislation to establish whether the prescribed conditions are met namely:

- The Neighbourhood Plan has been prepared and submitted for examination by a qualifying body as defined in Section 61F of the TCPA as applied to neighbourhood plans by section 38A of the PCPA.
- The Neighbourhood Plan has been prepared for an area that has been designated under Section 61G of the TCPA as applied to neighbourhood plans by section 38A of the PCPA.
- The Neighbourhood Plan meets the requirements of Section 38B of the PCPA (the Plan must specify the period to which it has effect, must not include provisions relating to 'excluded development', and must not relate to more than one Neighbourhood Area) and
- The policies relate to the development and use of land for a designated Neighbourhood Area in line with the requirements of the PCPA Section 38A.

1.3.4 I have examined the LUNP against the Basic Conditions above and, as Independent Examiner, I must make one of the following recommendations:

- a) that the Plan should proceed to Referendum, on the basis that it meets all legal requirements;
- b) that the Plan once modified to meet all relevant legal requirements should proceed to Referendum;

*\* NB Two other matters relating to the desirability of preserving or enhancing listed buildings and conservation areas are also included in the basic conditions but as these only concern neighbourhood development orders and not neighbourhood plans they are not included in this report.*

- c) that the Plan does not proceed to Referendum, on the basis that it does not meet the relevant legal requirements.

1.3.5 If recommending that the Plan should go forward to Referendum, I am also then required to consider whether or not the Referendum Area should extend beyond the Langford and Ulting Neighbourhood Area to which the Plan relates. I make my recommendation on the Referendum Area at the end of this Report.

1.3.6 The role of the independent examiner is not expressly to comment on whether the plan is sound or how the plan could be improved but rather to focus on the compliance with the Basic Conditions.

## 2. The Examination Process

2.1 It is a general rule that neighbourhood plan examinations should be held without a public hearing ie by written representations only. However, according to the legislation, when the Examiner considers it necessary to ensure adequate examination of an issue, or to ensure a person has a fair chance to put a case, a public hearing may be held.

2.2 With regard to the above and on consideration of all the evidence before me, I am satisfied that there is no need for a hearing in respect of the LUNP and I confirm that *all* representations on the Neighbourhood Plan received at the Regulation 16 stage have been taken into account in undertaking this examination.

2.3 I held a briefing meeting on matters of fact only with Maldon District Council and Langford and Ulting Parish Council representatives and undertook an unaccompanied site visit around the Parish on 10 March 2016.

I am grateful to both the Parish and District Councils for facilitating this.

2.4 In undertaking this examination, I have considered each of the following documents in addition to the Submission Version of the Langford and Ulting Neighbourhood Plan dated December 2015:

1. National Planning Policy Framework (The Framework) (2012)
2. The National Planning Practice Guidance
3. Town and Country Planning Act 1990 (as amended)
4. The Planning and Compulsory Purchase Act 2004 (as amended)
5. The Localism Act (2011)
6. The Neighbourhood Planning (General) Regulations (2012) (as amended)
7. Maldon District Replacement Local Plan 2005
8. Maldon District Local Development Plan 2014 2029 Pre-Submission
9. Langford & Ulting Neighbourhood Plan Basic Conditions Statement November 2015
10. Langford & Ulting Neighbourhood Plan Statement of Consultation November 2015
11. Langford & Ulting Strategic Environmental Assessment and Habitats Regulation Assessment Screening Report November 2015
12. Langford & Ulting Neighbourhood Area Map and Designation Application Statement

### 13. Langford & Ulting Neighbourhood Development Plan Evidence Base Documents

Also:

### 14. Representations received during the Regulation 16 publicity period post submission ending 04 February 2016

## 3. Public Consultation

### 3.1 Background

3.1.1 An accessible and comprehensive approach to public consultation is the best way to ensure that a neighbourhood plan reflects the needs, views and priorities of the local community.

3.1.2 LUPC submitted a Consultation Statement, as required by regulation 15 of the Neighbourhood Planning (General) Regulations 2012, to Maldon District Council in November 2015. This document sets out who was consulted and how, together with a brief outline on the outcome of the consultation and what action was taken in response to representations received.

3.1.3 Public consultation on the LUNP commenced with an initial questionnaire to residents in 2012. This was followed by various consultation stages, including the formal pre-submission consultation stage as required by Reg 14 and culminating in the formal, publicity stage, as required by Reg 16, the six week consultation period post submission of the plan from 10 December 2015 to 4 February 2016 which resulted in 11 consultation responses. These are considered as necessary within my assessment of the plan in section 6 below.

### 3.2 Langford and Ulting Neighbourhood Plan Consultation

3.2.1 The LUNP Steering Group has carried out consultation with the community and stakeholders throughout the process of plan preparation. The communication methods used involved articles in the thrice yearly 'Langford and Ulting News' which is delivered to every house and business in the parish, press releases, website, exhibitions, targeted meetings and drop-ins.

3.2.2 The initial consultation stage of the plan sounding out the parish on issues, initial ideas and suggestions was comprehensive spanning a 2 year period. It started in autumn 2012 with a household questionnaire with a 57% response rate and continued through to autumn 2014. During this time the Steering Group used the village Art Show on 2 occasions and Ulting Village Picnic to canvas views and carried out workshop discussion sessions with a focus group in each village and specific surveys of businesses, landowners and housing need. A second questionnaire survey looking at levels of development and housing was carried out in May 2014 with a 52% response rate. This comprehensive gathering of views and ideas has provided the LUNP with a strong foundation based on community input. GL Hearn acting for CML Microsystems has indicated in their response to the Reg 16 consultation that CML were not included in

the business and landowner surveys. However I am satisfied from the evidence of consultation letters that CML were consulted. If the company for whatever reason did not respond that is not a failing of the consultation exercise.

3.2.3 I have only one concern regarding this stage. Whilst the results in terms of the range and scope of comments are clear in both the consultation statement and the evidence base documents, I do not get a sense of what the agreed key issues for the plan are. The consultation statement says the findings at the various events were used to set key issues and priorities and it was put to me at my meeting with the Parish and District Councils on 10<sup>th</sup> March to discuss matters of fact that the key issues were set out in the evidence base documents. However whilst the analyses of the various consultation events in the evidence base do draw together individual comments received I cannot find anywhere a document that sets out the key issues that the plan will address. Inasmuch as this does not negate the consultation work carried out or the statement itself the point does not compromise the consultation process but it is a matter I return to in Section 6.2 below.

3.2.4 The pre-submission consultation as required by Regulation 14 involved a 7 week period from 2 March 2015 to 17 April 2015. The period was extended slightly as it covered Easter. The LUNP was published supported by the evidence base documents on the website. The consultation involved coverage in the 'Langford and Ulting News', press releases, website, notice boards, and a flyer drop to all households and businesses in the area. A staffed drop-in was held at the church on 11 April 2015 and the Langford Art Show on 28-29 March was again used as a venue to explain the plan and gather opinions. A comments form was printed and available to download on the website. During the period 36 submissions were made in writing. These were analysed and responded too and showed general overall support for the LUNP. Based on this assessment agreed changes were made to the plan for submission.

3.2.5 The Neighbourhood Planning Regulations are part and parcel of the 1st Basic Condition and regulation 15 (2) sets out clearly what the consultation statement should include. Having reviewed the consultation statement I am satisfied that the statement and its appendices are compliant with Reg 15 in demonstrating who was consulted, how they were consulted, what the main issues and concerns were and what action has been taken in response to these to arrive at the submission draft plan. Moreover it demonstrates an effective consultation process has been operating throughout the preparation of the plan.

## **4. Preparation of the Plan and Legislative Requirements**

In terms of the procedural tests set out in paragraph 1.3.3 of this report my findings are as follows:

### **4.1 Qualifying body**

4.1.1 LUPC is the duly elected lower tier council and is the appropriate qualifying body to prepare a neighbourhood plan for Langford and Ulting.

4.1.2 I am satisfied that the requirements set out in the Localism Act (2011) and in Section 61F(5) of the Town and Country Planning Act 1990 (as amended) and in regulations 8, 9 and 10 of the Neighbourhood Planning (General) Regulations 2012 have been met. The Parish Council is therefore the *qualifying body* for leading the LUNP.

## 4.2 Plan area

4.2.1 The Langford and Ulting Neighbourhood Area as designated coincides with the Parish boundary.

4.2.2 An application was made by the LUPC on 23 January 2013 to designate the Langford and Ulting Neighbourhood Area. This was approved by Maldon District Council on 24 April 2013 following consultation and the Neighbourhood Area was designated.

4.2.3 This satisfied the requirement in line with the purposes of preparing a Neighbourhood Development Plan under section 61G (1) of the Town and Country Planning Act 1990 (as amended) and regulations 5, 6 and 7 of the Neighbourhood Planning (General) Regulations 2012.

4.2.4 Representations were made at the Reg 16 publicity stage by Heybridge Parish Council that they objected to the neighbourhood plan area on the basis that it included part of North Heybridge Garden Suburb (a strategic development area) which is inappropriate in the context of the NHGS Strategic Masterplan Framework.

4.2.5 Whilst it is true that a small part of the parish lies within the masterplan area (where a section of the planned relief road, greenspace and the Flood Alleviation Scheme are located) the only matter specifically before me in this examination is to be satisfied that the designation of the neighbourhood area has taken place in accordance with Regulations 5-7. As stated above I am satisfied in this respect and there is no evidence to suggest that the neighbourhood area designation did not go through due process. The regulations include the requirement for consultation on the proposed neighbourhood area and it has been confirmed that this was duly carried out. It was at that stage that any objections to the neighbourhood area should have been raised and addressed and I cannot now recommend that the area is modified.

4.2.6 I took the opportunity to consider the issue on my site visit and am satisfied that the LUNP does not include any specific policies in respect of the NHGS area. I am therefore confident that the LUNP will not cause conflict to the holistically planned approach for the area in the Masterplan. It has been suggested to me however by MDC in a letter following the Reg 16 stage (see Appendix 1) that the Council would wish it to be made clear that where the Neighbourhood Plan boundary covers the Urban Extension that the Neighbourhood Plan policies are not applicable and that the North Heybridge Strategic Masterplan Framework and policies of the local plan will apply.

4.2.7 It is open to the Qualifying Body to reconsider the matter of the Neighbourhood Area as and when the LUNP is reviewed in the future but in the meantime the clarifying text appears to me to be a sensible addition for the avoidance of doubt.

**Recommendation 1** – Insert after the paragraph ‘Which Area Does the Plan Cover’ on Page 4 a new paragraph as follows:

***“A small part of the Neighbourhood Plan area at its eastern end includes part of the North Heybridge Garden Suburb urban extension. Within this area the Neighbourhood Plan policies are not applicable and the North Heybridge Garden Suburb Strategic Masterplan Framework and policies of the Local Plan will apply”.***

#### 4.3 Plan period

4.3.1 A neighbourhood plan must specify the period during which it is to have effect. The LUNP clearly states on its title page and in the introductory sections that it covers the period 2014 to 2029 chosen to coincide with Maldon District Council’s emerging Local Development Plan.

#### 4.4 Excluded development

4.4.1 The Plan does not include policies or proposals that relate to any of the categories of excluded development – county matters (mineral extraction and waste development), nationally significant infrastructure or any matters set out in Section 61K of the TCPA 1990. The LUNP relates solely to the neighbourhood area and no other neighbourhood and there are no other neighbourhood development plans in place within the Parish.

#### 4.5 Development and use of land

4.5.1 The Neighbourhood Plan should only contain policies relating to development and use of land. Subject to the modifications proposed below in section 6, the LUNP policies would be compliant with this and all relate to development and the use of land. Some community proposals are set out at section 5 of the plan but it is made clear that these are not formally part of the LUNP.

#### 4.6 Plan Publication Following Submission

4.6.1 Maldon District Council undertook a final validation check of the LUNP on submission in early December and was satisfied that the Plan could proceed to be publicised under Regulation 16 and proceed to this independent examination.

## 5. The Basic Conditions

### 5.1 National policy and advice

5.1.1 The main document that sets out national policy is the *National Planning Policy Framework* (the NPPF) published in 2012. In particular it explains that the application of the presumption in favour of sustainable development will mean that neighbourhood plans should support the strategic development needs set out in Local Plans and plan positively to support local development, shaping and directing development that is outside the strategic elements of the Local Plan.

5.1.2 The NPPF also makes it clear that neighbourhood plans should be aligned with the strategic needs and priorities of the wider local area. In other words neighbourhood plans must be in general conformity with the strategic policies of the Development Plan. They cannot promote less development than that set out in the Development Plan or undermine its strategic policies.

5.1.3 The NPPF indicates that plans should provide a framework within which decisions on planning applications can be made with a high degree of predictability and efficiency.

5.1.4 National advice on planning is set out in the *Planning Practice Guidance* (PPG) which includes specific advice regarding neighbourhood plans.

5.1.5 I consider the extent to which the plan meets this Basic Condition No 1 in section 6 below.

### 5.2 Sustainable development

5.2.1 A qualifying body must demonstrate how a neighbourhood plan contributes to the achievement of sustainable development. The NPPF as a whole constitutes the Government's view of what sustainable development means in practice for planning. The NPPF explains that there are three dimensions to sustainable development: economic, social and environmental.

5.2.2 There is no legal requirement for a formal sustainability appraisal to be carried out in respect of neighbourhood plans and one has not been carried out in this case. Instead a simple assessment of the sustainability of LUNP policies was carried out as part of the Basic Conditions Statement. The findings of this simple assessment were that the policies had no likely negative impacts on economic, social or environmental objectives and no need for mitigating changes.

5.2.3 In general I am satisfied that this assessment process in conjunction with screening opinions for Strategic Environmental Assessment and Habitat Regulations Assessment carried out by the District Council (see below) does support a conclusion that overall the LUNP is a sustainable plan. However, I consider detailed points regarding the plan's ability to meet Basic Condition No 2 in section 6 below.

### 5.3 Conformity with the Development Plan

5.3.1 The adopted development plan in force for Maldon remains the Maldon and District Replacement Local Plan (MDRLP) and more particularly the policies of that plan that were 'saved' in September 2008. Therefore in terms of assessing the plan against Basic Condition No 3 it is the MDRLP that must be used. However this was adopted in 2005 and is now quite dated – preceding the NPPF. If there are circumstances where a MDRLP policy is no longer consistent with the NPPF and a conformity issue arises with the LUNP I will attach greater weight to the degree of conformity with the NPPF and take a flexible approach to the MDRLP. The test in Basic Condition No 3 is after all **general conformity** with strategic policies.

5.3.2 The PPG explains that neighbourhood plans can be developed before or at the same time as the Local Planning Authority is producing its local plan. The MDRLP's replacement, the Maldon District Local Development Plan (LDP), is well advanced. It was submitted for examination in April 2014 which commenced but was suspended following the Inspector's finding that policy H6 was unsound. Discussions are ongoing with DCLG to establish a timetable for the recommencement of the examination. A letter from the Secretary of State to Maldon District Council dated 7<sup>th</sup> March 2016 confirms that the plan as a whole is not unsound merely because one policy is and that the plan can proceed back through examination.

5.3.3 In view of its advanced state the Parish Council in consultation with the District Council has collaborated, as advised in the PPG, to align the LUNP with the policies and proposals of the emerging LDP Submission Version to minimize the possibility of any conflict in the future. I understand why in the circumstances it is reasonable and practical to seek to align the LUNP with the LDP but the LUNP cannot at this stage be tested for general conformity against the policies in the emerging LDP.

5.3.4 It is however a requirement of the NPPF that plans are based on sound current reasoning and evidence and I will therefore be considering as part of my assessment against Basic Condition No 1 the extent to which the LUNP has taken account of the most recent evidence available which will be the evidence base of the LDP.

5.3.5 The judicial review of the legal challenge to the Tattenhall Neighbourhood Plan made by Barrett Homes and Wainhomes Developments and the decision by senior High Court judge, Mr Justice Supperstone in 2014, clarifies and confirms the approach that must be taken in respect of Basic Condition No 3 in respect of emerging plans.

5.3.6 Maldon District Council has confirmed that it has no concerns over the general conformity of the LUNP with the 'saved' strategic policies of the MDRLP 2005. I consider in further detail in Section 6 below the matter of general conformity with the plan.

## 5.4 European Union (EU) Obligations

5.4.1 A neighbourhood plan must be compatible with European Union (EU) obligations, as incorporated into UK law, in order to be legally compliant.

### Strategic Environment Assessment and Habitat Regulations Assessment

5.4.2 Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment has a bearing on neighbourhood plans. This Directive is often referred to as the Strategic Environment Assessment (SEA) Directive. Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora and Directive 2009/147/EC on the conservation of wild birds (often referred to as the Habitats and Wild Birds Directives respectively) aim to protect and improve Europe's most important habitats and species and can have a bearing on neighbourhood plans.

5.4.3 Regulation 15 of the Neighbourhood Planning regulations as amended in 2015 requires either that an Environmental Assessment is submitted with a Neighbourhood Plan proposal or a determination from the responsible authority (MDC) that the plan is not likely to have 'significant effects'

5.4.4 As stated above a screening opinion both in respect of the need for Strategic Environmental Assessment (SEA) and Habitat Regulation Assessment (HRA) was prepared by the District Council in consultation with the statutory bodies. These determined that there would be no need to carry out either assessment. The Blackwater Estuary Special Protection Area and Essex Estuaries Special Area for Conservation are the nearest European sites to the Neighbourhood Area.

5.4.5 The test in the additional Basic Condition is that the making of the neighbourhood development plan is "*not likely to have a significant effect on a European site (as defined in the Conservation of Habitats and Species Regulations 2012) either alone or in combination with other plans or projects.*" Given the nature and content of the Neighbourhood Plan, the limited scale of development it promotes and the distance from the estuary the screening opinion determined it unlikely that there would be any direct significant effect. Any in-combination effects with other strategic site allocations such as North Heybridge Garden Suburb closer to the estuary would already be covered by mitigation measures established for these areas.

5.4.6 As a precaution however the Screening Report proposes that reference is made in the plan to undertaking assessments of future proposals to ensure there would be no significant effect on designated Natura 2000 sites as a result of developments in the LUNP area. The statutory consultees have not objected to this approach and therefore the LUNP as a whole is compatible with this EU obligation. Text was included in the LUNP between the pre submission and submission stages and I consider this matter further below in Section 6.

### European Convention on Human Rights (ECHR)

5.4.7 The Human Rights Act encapsulates the Convention and its articles into UK Law.

5.4.8 In respect of Article 1 of the first protocol - the right of everyone to the peaceful enjoyment of possessions; although the LUNP includes policies that would restrict development rights, this does not have a greater impact than the general restrictions on development rights provided for in national law. The restriction of development rights inherent in the UK's statutory planning system is demonstrably in the public interest by ensuring that land is used in the most sustainable way, avoiding or mitigating adverse impacts on the environment, community and economy.

5.4.9 In respect of Article 6 of the Convention's Rights and Freedoms - the right to a fair and public hearing in determination of an individual's rights and obligations - the process for preparing the LUNP is fully compatible with this Article, allowing for extensive consultation on its proposals at various stages, and incorporating this independent examination process.

5.4.10 In respect of Article 14 of the Conventions Rights and Freedoms - the enjoyment of rights and freedoms without discrimination on any ground, the policies and proposals of the LUNP have been developed in full consultation with the community and wider stakeholders to produce as inclusive a document as possible. Although no specific Equalities Impact Assessment has been carried out I am satisfied that, across the plan as a whole, no sectors of the community are likely to be discriminated against and no objections have been raised that would suggest otherwise. The policies together would generally have public benefits and encourage the social sustainability of the neighbourhood.

5.4.11 I am satisfied therefore that the Plan does not breach, and is otherwise compatible with, the ECHR.

### Other EU obligations

5.4.12 I am not aware of any other European Directives which apply to this particular Neighbourhood Plan and no representations at pre or post-submission stage have drawn any others to my attention. Taking all of the above into account, I am satisfied that the LUNP is compatible with EU obligations and therefore with Basic Conditions Nos 4 and 5.

## 6. The Neighbourhood Plan – Assessment

The Neighbourhood Plan is considered against the Basic Conditions in this section of my Report following the structure and headings in the Plan. Given my findings in section 5 above that the plan as a whole is compliant with Basic Conditions Nos 4 and 5, this section largely focusses on Basic Conditions No 1 (Regard to National Policy), No 2 (Delivery of Sustainable Development) and No 3 (General Conformity with strategic policies of the Development Plan).

Where modifications are recommended, they are presented and clearly marked as such and highlighted in bold print, with any proposed new wording in italics.

### 6.0 The General Form of the Plan

6.0.1 The structure of the LUNP is logical and clear with sections distinguishing between the policies themselves, and their justification. Each policy is accompanied by some supporting text and I suggest in the topic sections below where a greater degree of justification is required.

6.0.2 Throughout the plan there are a number of maps explaining constraints or characteristics for example flooding but Map 4 on Page 31 is crucially different in that it sets out the settlement boundary and conservation areas for Langford. The NPPF indicates that plans should provide a practical basis within which decisions on planning applications can be made with a high degree of predictability and efficiency and to fully comply with Basic Condition No 1 and advice that plans should be clear and unambiguous, the different status of Map 4, where it will be used to interpret policy, should be recognised.

6.0.3 I recommend that it is retitled Policies and Proposals Map and enlarged to at least A4 or possibly A3 in size with scale and north point. It should indicate all areas where a policy of the plan has a spatial dimension.

**Recommendation 2** – Retitle Map 4 as “*Langford and Ulting Neighbourhood Plan - Policies and Proposals Map*” enlarge to at least a whole page size in the plan and ensure that where there is a spatial dimension to any policy it is mapped.

6.0.4 As a minor point regarding the general form of the plan it has been pointed out by GL Hearn at the Reg 16 consultation that using and referring to the plan is not easy without section and paragraph numbers included. I agree that numbering would aid those using the plan and again to fully comply with Basic Condition No 1 and advice that plans should be clear and unambiguous the LUNP should be numbered by section and paragraph throughout.

**Recommendation 3** – Number the sections and paragraphs of the plan throughout.

6.0.5 With these modifications in place the general form of the plan will comply with the Basic Conditions.

## 6.1 - Introduction

6.1.1 The first section of the LUNP is largely factual setting out the contextual information about the neighbourhood planning process and how it has been developed in partnership with the local communities in the plan area. There are 3 issues however that need to be clarified.

6.1.2 First paragraph 2 on page 4 appears to paraphrase the basic conditions but uses different terminology which introduces confusion. The basic conditions themselves are set out at the top of page 7 of the plan so the paragraph could simply be deleted or, if to be retained, needs to be expressed in the same terms as the legislation.

6.1.3 Secondly, GL Hearn in their representation in response to the Reg 16 consultation have expressed concern that the rationale for undertaking the plan on page 5 unnecessarily refers to the fact that this was triggered by a planning application which the village wished to resist. The particular application referred to is no longer at issue but more importantly the plan should not focus on the prevention of development opportunities.

6.1.4 The Planning Practice Guidance is clear that “*neighbourhood planning provides the opportunity for communities to set out a positive vision for how they want their community to develop... in ways that meet identified local need and make sense for local people*” and in that spirit I agree that the paragraph on page 5 sets the wrong tone for the plan and should be replaced to accord with Basic Condition No 1.

6.1.5 Thirdly, the Neighbourhood Plan Process timeline on page 6, whilst a very useful summary, refers to 2 rounds of submission consultation in 2015. This was not correct. The pre-submission consultation took place in Spring 2015 and not winter 2014 as stated. There is also a need to now adjust the dates for examination, referendum and adoption.

### **Recommendation 4**

**4A** – Delete paragraph 2 page 4 or at least revise the terminology to reflect the 2 basic conditions regarding national policy and the development plan.

**4B** – Replace the wording of the first two sentences of the Paragraph ‘Why do we want a Neighbourhood Plan’ as follows:

**“*Neighbourhood planning provides the opportunity for communities to set out a positive vision for how they want the neighbourhood area to develop in ways that meet identified local need and make sense for local people. Langford and Ulting Parish Council therefore .....*”**

**4C** – Revise the timeline on page 6 relocating the text from Winter 2014 and using it to replace the text at Spring 2015. Update examination, referendum and adoption / ‘made’ dates.

6.1.6 With these modifications in place Basic Condition No 1 will be satisfied in terms of the plan being clear and unambiguous.

## 6.2 Section 1 – About Langford and Ulting Today

6.2.1 The first section of the LUNP sets out the contextual information about the parish. This provides scene setting and a descriptive basis for the LUNP itself. As regards the factual content of this section I do not propose any modifications. However the reader gets no sense from this section about what the issues are which the plan is seeking to address.

6.2.2 Whilst the *What's in the Neighbourhood Plan* section of the Introduction does refer to some issues it is not immediately apparent whether this is a complete list or how they have been derived.

6.2.3 The Planning Practice Guidance states that "*Neighbourhood planning provides the opportunity for communities to set out a positive vision for how they want their community to develop... in ways that meet identified local need and make sense for local people*". Accordingly there should be a clear 'thread' in the LUNP from the community's identification of issues to the Plan's vision and objectives and into the policies and proposals. I consider that this 'thread' is not as clear as it could be to fully comply with the PPG, and therefore with Basic Condition No 1.

6.2.4 I referred at 3.2.3 above to this matter and whilst it is clear from the evidence what the issues **might** be, they are not clearly set out. I recommend that a paragraph is added to the end of section 1 to resolve this. This could be based on and developed from the listing on Page 7.

**Recommendation 5** – Add a paragraph at the end of section 1 on page 14 to state the following or similar:

***"The Steering Group has identified a number of key issues derived from the statistical context above and the results of the household questionnaire surveys in 2012 and 2014 and the business and housing needs surveys in 2014 as follows:-***

**(Add list relocated from Page 7 developed as necessary)**

***These reflect the issues the community sought to see resolved in the neighbourhood planning process and have shaped and influenced the Langford and Ulting Neighbourhood Plan***".

6.2.5 With this modification implemented the issues will form a more coherent base for the vision and objectives and better ties in with the introduction to section 3 of the plan thus building the 'thread' referred to above and would be compliant with Basic Condition No 1.

## 6.3: Section 2 – Our Vision for Langford and Ulting

6.3.1 Section 2 of the LUNP sets out the vision and objectives for the neighbourhood plan

which will now draw more clearly on the identified issues. The content of the vision and its related plan objectives are strongly correlated with the vision of the MDRLP 2005 at para 1.23 and its strategic objectives at para 1.30 and will establish the basis of a sustainable future and therefore complies with Basic Conditions Nos 2 and 3.

6.3.2 GL Hearn in their representations to the Reg 16 consultation raise concern that the element of the vision and first objective referring to a friendly and neighbourly community is not justifiable in a neighbourhood plan given that the objective will be difficult to deliver. Whilst I accept that it is a 'soft' objective, that is not easy to deliver, it is nevertheless part of building quality of life and therefore part of the social role of planning referred to in the NPPF. Moreover the objective itself refers to improving connectivity and community engagement through the neighbourhood planning process which is arguably more deliverable. I do not therefore feel it is necessary to recommend a modification although the Council may choose to think about the wording in consultation with the Parish Council.

6.3.3 GL Hearn also raise a concern in respect of the 6<sup>th</sup> objective which ties the plan to meeting the housing needs of local residents. By implication this means that housing for existing residents would be acceptable but for anyone else it is not. I accept this is not a policy statement but even so it goes beyond national policy at Para 54 of the NPPF and therefore conflicts with Basic Condition No 1. It should be reflected differently and I recommend that the objective is modified.

**Recommendation 6 – Reword objective number 6 to read :**

***“To accommodate local housing need through the provision of.....”***

**6.4 Section 3 The Neighbourhood Plan Policies**

**6.4.1 Policy 1 Protecting and Enhancing Biodiversity**

a) Section 11 of the NPPF on conserving and enhancing the natural environment stresses the need for plans to minimise impacts on biodiversity and provide net biodiversity gains thus the principle of policy 1 has regard to the NPPF and in particular paragraph 109. The policy is also in general conformity with the Coast and Countryside policies of the MDRLP in particular CC1-5 dealing with nature conservation. In ensuring that any development in the plan area protects biodiversity the policy is also likely to contribute to sustainable development. Thus the policy itself meets Basic Conditions 1, 2 and 3.

b) However the Planning Practice Guidance requires proportionate, robust evidence to support the choices made and the approach taken. The evidence should be drawn upon to explain succinctly the intention and rationale of the policies in the neighbourhood plan and in that respect I am not satisfied that the supporting justification for the policy adequately explains the need for it. Most of the preamble deals with Landscape Character issues

largely unrelated to biodiversity and for which no policy is proposed. I accept that my recommendation 5 will help provide the context but to comply with Basic Condition 1 and the need for policies to be supported by evidence I recommend that text is added before policy 1 focusing on the biodiversity issues in the plan area raised by the community as a justification for the policy.

**Recommendation 7 – MDC to work with the Parish Council to prepare additional justifying text to policy 1.**

6.4.2 Policy 2 Footpaths and bridleways

a) Paragraph 35 of the NPPF seeks to protect and exploit opportunities for sustainable transport modes and policies T1 and T2 of the MDRLP seek to promote sustainable transport so the substantive matter of policy 2 as presented in the preamble meets Basic Conditions 1 and 3. However the preamble to policy 2 outlines the importance of the footpath network for access, recreation and healthy living whilst the policy itself only refers to the amenity value of footpaths.

b) The PPG stresses the importance of evidence to support policies and as much as the preamble sets a wider context in keeping with national and local policy - policy 2 should follow suit.

c) Accordingly to better align with basic conditions 1 and 3 I recommend that the policy should acknowledge the wider importance of footpaths and bridleways in terms of connectivity and recreation.

**Recommendation 8 – Reword the first sentence of policy 2 to read:**

***“Existing footpaths and bridleways provide good opportunities for access by sustainable modes of transport across the parish and provide a high level of recreation and amenity value.....”***

6.4.3 Policy 3 Design and Character

a) Policy 3 seeks to achieve high quality design and is well evidenced. GL Hearn in their representations at the Regulation 16 stage express concern over the wording of clause e) and assert that it is likely to be ineffective. I do agree that substituting the word ‘environment’ for ‘nature’ in the last line of the policy would be clearer and ties more effectively into policy 4 on the historic environment following but otherwise the policy intent is clear. It has regard to the NPPF at Section 7 and MDRLP policy BE1. It will also contribute to sustainable development. Accordingly the policy meets basic conditions 1, 2 and 3.

**Recommendation 9 – replace ‘historic nature’ with ‘historic environment’ in the last**

## line to the policy.

### 6.4.4 Policy 4 Historic Environment

a) Policy 4 seeks to preserve or enhance heritage assets whether designated or non-designated. In that respect it meets the statutory test and has regard to national policy in section 12 of the NPPF and is in general conformity with the suite of policies in the MDRLP at BE13, 14 and 16-18.

b) However whilst the policy seeks to protect non-designated heritage assets (NDHA) I cannot find any reference in the evidence base to their identification. Just because they are non-designated does not mean they do not need to be identified. The NPPF indicates that plans should provide a practical basis within which decisions on planning applications can be made with a high degree of predictability and efficiency. Historic England also point out in their representation at the Reg 16 consultation that the PPG is clear that Neighbourhood Plans need to include enough information about local heritage to guide planning decisions. Given this context the second paragraph of the policy is problematic in that it appears impossible to be certain which are NDHAs and therefore where the policy will apply. Neighbourhood Plans give the opportunity to identify NDHAs and inasmuch as defining them would not change the policy intent it would be possible for the parish, working with the MDC Conservation Team, to define appropriate buildings and structures, which is work which I understand has commenced.

c) Either the NDHAs need to be identified for the policy to operate in a manner compliant with Basic Condition 1 or the second part of the policy needs to be removed. The latter option would run counter to the NPPF and PPG and would not meet the views of Historic England and Essex County Council in their Reg 16 representations.

d) Historic England in its representation also suggests that the preamble should refer to other designated assets than just the conservation areas. This does not raise issues in respect of the Basic Conditions so I do not formally recommend it but inasmuch as this would be a purely factual addition to the preamble it could be made. In the same way the suggested text addition by Essex County Council in its representation at the Reg 16 consultation regarding the archaeological context for the plan area could be added to the preamble to policy 4 rather than as suggested by them to Section 1. In this way it would relate better to the policy reference to NDHAs.

**Recommendation 10 – Either identify in a table in the preamble to policy 4 (or an appendix cross-referenced from the preamble) the local heritage assets to which part 2 of policy 4 will apply or delete part 2 of the policy.**

With this modification implemented policy 4 meets the Basic Conditions.

## 6.4.5 The Economy and Business

a) The preamble on Page 23 sets the scene generally in respect of the economy and business within the parish and this section has attracted criticism from GL Hearn at the Reg 16 consultation stage acting for CML Micro systems the owners of Oval Park that the LUNP pays insufficient regard to the true potential of the site.

b) The site is mentioned in paragraph 2 of the preamble on page 23 where it is noted that the CML Microsystems site has an extant planning permission for additional employment space. However more significantly it is allocated in both the MDRLP and the emerging LDP for employment-related development and should be acknowledged as such.

c) The Planning Practice Guidance states that *“Neighbourhood planning provides the opportunity for communities to set out a positive vision for how they want their community to develop... in ways that meet identified local need and make sense for local people”*. In that context and to meet Basic Condition 1 the economic potential of the site for the local economy should be formally recognised in the plan and the allocated area of Oval Park identified on the Policies and Proposals Map proposed at Recommendation 2.

d) GL Hearn argues that because of limited interest in the site for business park uses a more mixed development incorporating business, residential and open space uses should be proposed in the plan. However this is a different issue to acknowledging the current status of the site and the proposal would be contrary to both the adopted and emerging local plan. For the LUNP to propose such an approach would not be in general conformity with the MDRLP.

**Recommendation 11** - Replace the last sentence of para 2 on page 23 with the following:

***“11.75 hectares of the CML Microsystems site at Oval Park is allocated in the MDRLP and in the emerging LDP for B1 and B2 development and also has an extant consent for additional employment space. The site therefore has significant potential for future employment-generating development to the benefit of the local economy. The allocated area at Oval Park is identified on the Policies and Proposals map.”***

Policy 5 Supporting and Encouraging Small Businesses.

e) Section 3 of the NPPF encourages sustainable rural economic growth through both conversions and new build and objectives Ei and Eii of the MDRLP similarly encourages sustainable employment growth. Policy 5 encourages the provision of employment generating space for small businesses in either new buildings, extensions or conversions subject to criteria and is therefore in accordance with this policy context and is well

evidenced in the preamble.

f) There is a slight tension between LUNP policy 5 and policy E7 of the MDRLP which effectively restricts new build employment generating development, other than on allocated sites, to within development boundaries. This would restrict such development to the Langford proposed settlement boundary and the allocated sites only whereas in fact policy 5 would allow development outside the boundary if the other criteria are met.

g) The fact that policy 5 does not restrict new buildings outside of the settlement boundary does not however raise a significant matter of general conformity given i) the general support the NPPF (as the more recent policy) gives for rural enterprise, ii) the fact that the emerging LDP at policies E4 and E5 takes a more flexible view and iii) that policy 5 also includes caveats such that new building outside of the settlement boundary would actually be quite limited. The policy content therefore meets the basic conditions 1, 2 and 3. However again in respect of the PPG advice that policies should be clear and unambiguous, the policy would benefit from being set out more clearly as follows:

**Recommendation 12 – Change line 2 to read :**

***“This can take the form of :***

- ***New buildings or extensions to existing premises .....occupiers or***
- ***The change of use of an existing building.....occupiers”.***

h) With that minor adjustment the policy would be clearer and better meet Basic Condition No1.

#### 6.4.6 Policy 6 Working from Home

a) Policy 6 regarding working from home similarly has regard to the NPPF at section 3 and to policies E8 of the MDRLP and is likely to contribute to a sustainable form of living in the parish as explained in the preamble. As such it meets basic conditions 1, 2 and 3 and I do not see the need for any modification.

#### 6.4.7 Policy 7 Farm and Other Rural Buildings

a) Policy 7 in allowing the reuse of rural buildings for business and tourism purposes subject to controlling criteria again has regard to section 3 of the NPPF and policy CC19 of the MDRLP on rural diversification. Policy CC19 and policy E4 of the emerging LDP include a different set of criteria to policy 7 but the two tiers of policy would be complementary and policy 7 sets criteria that are important in respect of local issues in the parish. I do not see any problem with general conformity and see no need for modification.

#### 6.4.8 Policy 8 Community Facilities and Services

a) Whilst the intention in the preamble behind this policy to support rural service provision is clear and has regard to the NPPF intention at section 3 and in paragraph 70 and to the objective of MDRLP policy SH6, to resist the loss of rural shops and services, the policy itself is slightly ambiguous and could be read in a different way.

b) The policy reads as though it lends support to **any** development proposal that retains and enhances a local service or facility and provides a new one. This is confusing given the intention in the preamble to the policy and could undermine the objectives of the plan. Moreover the policy at the end of line 1 includes the word ‘**and**’ making the support contingent on both retaining/enhancing **and** providing new services. Again I find this confusing and indeed a proposal that achieved both would be quite unusual.

c) The NPPF indicates that plans should provide a practical basis within which planning applications can be made with a high degree of predictability and the PPG states that policies should be clear and unambiguous. As such for policy 8 to meet Basic Condition 1 I recommend that it is modified. This could be simply achieved by replacing the words “that” and “and” in the first sentence of the policy.

**Recommendation 13 – Reword the opening part of the policy as follows:**

**“Proposals to retain and enhance existing community facilities or to provide new ones will be supported provided that:.....”**

#### 6.4.9 Policy 9 Housing

a) The housing section at page 27 refers to the emerging LDP but in view of the stage that the LDP had reached when the LUNP was being drafted the Neighbourhood Plan does not give any specifics about level of housing need sought in the emerging plan for the rural area or the expectation on Langford and Ulting parish in terms of housing provision.

b) In this context and given the requirement of the NPPF that Neighbourhood Plans should plan positively to support local development, shaping and directing development in their area, I am not convinced that this section of the plan is sufficiently clear in its position.

c) In addition, in line with the advice in the NPPF and the PPG that neighbourhood plans being prepared in advance of local plans should pay particular regard to the evidence base and direction of travel for the emerging plan, the housing strategy in respect of Maldon District’s rural area and the expectation of Langford and Ulting should be set out as there is now sufficient certainty to do so. Indeed a section of text on this matter would help to aid clarity and respond to criticisms from GL Hearn acting for landowners.

d) This examination and the opportunity to make modifications should be used to meet the NPPF and PPG requirement that neighbourhood plans should be based on clear and up to date evidence. Therefore to satisfy Basic Condition No 1 the plan should clearly set out its position against the land supply evidence assembled for the LDP and make clear how the neighbourhood plan will respond.

e) As I understand it, the objectively assessed need (OAN) for the district was accepted by the examining Inspector and the Secretary of State in his letter of 7<sup>th</sup> March to be comprehensive and objective. The housing requirement figure for the rural area of the district up to 2029 has therefore been confirmed as 420 units. Work on the Rural Allocations Development Plan Document is advancing and the site assessment methodology looks to support the major villages as the main locations in which to make this provision rather than the smaller villages such as Langford. The LUNP's intention to limit development to small scale incremental change in the village and parish is not therefore contrary to the emerging plan but this should be stated. At present there is not a clear sense to the reader and plan user of the quantity of housing that might be achieved over the plan period and where it will be accommodated. I recommend that the following modification should be made.

**Recommendation 14** – The District Council working with LUPC should revise the first two paragraphs of page 27 under a new title “*Providing to Meet Local Housing Need*” to include the following or similar text:

***“Langford and Ulting form part of Maldon District’s rural area for the purposes of housing land supply. The objectively assessed need prepared for the emerging Maldon District Local Development Plan requires approximately 420 houses to be provided in the Rural Area up to 2029 the majority of which is anticipated to be met on sites in the larger rural settlements. Langford is identified as a smaller village in the emerging Local Plan’s settlement hierarchy and for the first time will have an identified settlement boundary within which housing development will be acceptable. The nature of Langford is such however that opportunities for development will be small scale principally on individual plots and small areas of land. The village and parish contribution to housing land supply will therefore be limited to small scale development and likely to amount to an average of 1 or 2 dwellings per year over the plan period.*”**

f) With this modification in place the preamble to the policy would meet Basic Condition No 1 but I have major concerns over the proposed policy 9 as it stands.

g) The policy provides for market housing outside of the settlement boundary albeit closely constrained in terms of site selection criteria and the proposed occupancy restriction. Whilst the NPPF at Paragraph 54 states housing in rural areas should be planned to reflect local needs, which ostensibly is what policy 9 is seeking to do, it goes on to state that this should be particularly for affordable housing including through rural exception sites which is not the intention of the policy. Paragraph 55 states that Local Planning

Authorities should avoid isolated homes in the countryside unless there are special circumstances and gives examples. Whilst meeting local housing need may be a 'special circumstance', one would expect the delivery of any housing provided outside settlement boundaries to be controlled to that end. Moreover, whilst policy 9 seeks to locate houses together with an existing property, potentially the new dwellings would still be isolated from settlements.

h) The MDRLP at policies S2 and H1 looks to protect the countryside for its own sake and restrict housing outside settlement boundaries unless it complies with the other policies in the local plan which could include rural worker housing (policy CC14), reuse of rural buildings for housing (CC21) and rural exceptions housing (policy H10). The neighbourhood plan seeks to go beyond these in policy 9 and makes clear in the preamble that these are not rural exceptions sites.

i) Moreover although policy 9 proposes tight constraints on site selection there is no controlling mechanism to ensure these homes built exceptionally would continue to be available in the future to meet local need or even that it would be occupied by the intended recipient in the first place. Therefore once built there is no future control and over time there would be creeping development of the countryside contrary to the NPPF and Local Plan policy. More worryingly, housing provided without restriction is unlikely to be affordable, certainly to young adults in housing need locally which is one of the target beneficiaries of the policy.

j) Finally the policy in restricting provision to existing residents of the parish introduces a personal element which is inappropriate and may result in indirect discrimination under the Equality Act 2010. Most policies attempting to make special provision use the more generic term of 'local housing need'.

k) Thus as things stand there is a tension with the NPPF, the policy is not in general conformity with the MDRLP and I am not satisfied that the policy intention, even at the limited scale of development proposed, is sustainable either. Thus Basic Conditions 1, 2 and 3 are not met.

l) Some of these difficulties could be resolved by adapting the policy for example adding a clause that requires management of the property through a S106 legal agreement to ensure occupancy by those in local housing need and changing the terminology to talk about providing for local housing need rather than occupation by an existing parish resident. However the fact remains that the basic concept of a dispersed pattern of development outside of settlement boundaries is contrary to the NPPF, the MDRLP and also the emerging LDP. Given these concerns with the policy I consider that it cannot be retained in its present form and should be deleted along with related supporting text.

m) I understand that there is some evidence from the housing needs survey for the sort of local need the Parish Council is trying to meet and that there may be no alternative way of meeting this need other than outside the settlement boundary. If that is the case it is

possible with some adaption the policy could be converted into a rural exceptions policy that looks to secure rural exceptions housing adjacent to the Langford settlement boundary on small 1 and 2 house plots the outcome of which could in part achieve the LUNP objective. Much of the policy criteria could be reapplied but the preamble would need to be refocused from the 5<sup>th</sup> paragraph on Page 23 onwards. However the Council would need to carefully consider whether this materially changed the plan such that reconsultation was necessary through a second submission and Reg 16 consultation.

### **Recommendation 15**

**Delete Policy 9 in its present form and the preamble after the paragraph ending “...would in any case go against the grain of an exception site”.**

With this modification the plan would meet Basic Conditions Nos 1, 2 and 3.

#### 6.4.10 Policy 10 Energy Efficiency and Sustainability

a) Whilst I do not dispute that the intention behind Policy 10 has regard to section 10 paragraph 95 of the NPPF, will achieve more sustainable development and reflects policy D2 of the emerging LDP (designing in response to climate change), policy 10 as drafted is vague and non-specific.

b) The NPPF requires that plans should provide a practical basis within which decisions on planning applications can be made with a high degree of predictability and the PPG that policies in a neighbourhood plan should be drafted with sufficient clarity that a decision maker can apply them consistently. The policy as it stands, in failing to set out what ‘high sustainability standards’ means, fails these tests.

c) In view of the extensive detail in emerging LDP policy D2 (note there is no directly comparable policy in the MDRLP) LUNP policy 10 as it stands adds little to control of development and in the fullness of time may be unnecessary. In this case it could simply be deleted. If however the Parish consider that it is a matter they wish to control in terms of local impacts, the policy needs to be better explained and the meaning of ‘high sustainability standards’ explained in the preamble and policy. If this second route is to be followed the Council must work carefully to modify the policy to explain what are the ‘high sustainability standards’ without changing the sense or purpose of the policy. In other words it is only the definition or interpretation of ‘high sustainability standards’ that can be added at this stage.

**Recommendation 16 - Either delete policy 10 and its supporting text or clarify the meaning and intent of ‘high sustainability standards’ in preamble and policy so that the policy can be applied consistently in decision making.**

With either approach applied the plan will meet Basic Condition 1

#### 6.4.11 Policy 11 Broadband and Mobile Connectivity

a) In seeking to improve communications connectivity in policy 11 the LUNP responds positively to section 5 of the NPPF and in particular paragraphs 42 and 43 supporting the expansion of electronic communications networks.

b) However Policy 11 gives unfettered support for development of new high speed broadband infrastructure which does not have regard to the requirements of paragraph 43 of the NPPF encouraging the sharing of masts, buildings and structures and where new sites are required ensuring these are sympathetically designed and camouflaged. The policy should at least be constrained by the tests set out in the NPPF if Basic Condition 1 is to be met.

c) There is now no 'saved' policy in the MDRLP specifically dealing with telecoms and communications networks or in the emerging LDP although the latter at policies S1(14) and S7 (1) does support expansion of electronic communications networks and thus the policy intention conforms with the emerging LDP.

**Recommendation 17** Add at the end of the first sentence in policy 11:-  
“...*subject to the tests set out in the National Planning Policy Framework.*”

#### 6.4.12 Policy 12 Settlement Boundary for Langford.

a) In the adopted MDRLP Langford was a village without a settlement boundary and as such development within the parish is restricted by saved policies S2 and H1.

b) This section of the plan responds to the intention of the emerging LDP at policy S8 that Langford should have a defined settlement boundary. This policy was considered at the examination stage of the LDP before the examination was suspended and whilst the specific extent of settlement boundaries was not considered, the principle of boundaries for the villages in policy S8, including Langford, was accepted. In this context I consider that defining a boundary for the village can be supported even though such a concept is not provided for within the adopted MDRLP.

c) Having said that I have concerns about the way the matter is presented in the preamble to policy 12 which is tentative and lacks certainty, appearing to leave it as uncertain whether the LUNP settlement boundary or the settlement boundary proposed in the LDP would apply.

d) Given that the NPPF requires plans to provide a practical basis within which decisions on planning applications can be made with a high degree of predictability and efficiency and given that the LUNP is likely to be 'made' and adopted by the Council before the LDP is adopted, the LUNP should provide the firm settlement boundary provided this is based on clear evidence.

e) The Parish Council has produced a document EB023 Settlement Boundary which sets out a clear rationale for the proposed boundary. GL Hearn acting as agents for landowners at the Regulation 16 stage has argued that Oval Park and Ulting Lane properties should be included within the settlement boundary in particular because of the current role of CML Microsystems at Oval Park as a major employment site and given the extant permission to extend it.

f) The question of whether the settlement boundary is drawn correctly goes beyond my remit of examining whether the plan meets the basic conditions but I do need to be satisfied that there is clear evidence for the decision made and I am satisfied that EB023 supplies this. Furthermore inasmuch as the MDRLP at policy S2 seeks to safeguard the countryside around settlements for its own sake I am satisfied that a settlement boundary that included Oval Park and Ulting Lane and the large areas of land between these locations and Langford itself would not be in general conformity with the objective of MDRLP policy S2.

g) To improve the clarity of intent with regard to the settlement boundary I recommend that modifications are made to the preamble in order that it meets Basic Condition No 1.

h) A further matter arises with respect to the preamble and that is in the existing paragraph 4 on page 31. This was the paragraph added to refer to the possibility of significant effects on European sites arising from development. The text that has been added arguably is more policy statement than policy preamble. However inasmuch as the statutory consultees have considered this and not raised concerns that it is not expressed as policy I do not propose to recommend that it is added to the policy at this stage. However the text should include the whole test in the Basic Condition rather than paraphrasing it and it would be clearer if it immediately followed the policy as a Note.

### **Recommendation 18**

**18A** – Delete the first two paragraphs of the preamble and replace with the following:

***“The emerging Maldon District Local Development Plan provides for a settlement boundary to be defined around Langford for the first time. The Parish Council supports the principle of this and proposes a new settlement boundary to be included in the Neighbourhood Plan.”***

**18B** - Add after the third paragraph on Page 31 a new paragraph which states :

***“The settlement boundary is set out in the Policies and Proposals Map.”***

Then add the text from paragraph 5 regarding the evidence base.

**18C** – Replace the wording of the current paragraph 4 on page 31 as follows and position it after Policy 12:

***“The designation of the settlement boundary for Langford will mean that there will be a need for any new development within it to demonstrate that it is not likely to have a significant effect on a European Site either alone or in combination with other plans or projects.”***

i) In addition to the change to clarify the preamble, the wording of policy 12 has the same shortcoming as policy 10 in that it fails to satisfy the requirements of policies in the NPPF and advice in the PPG. The NPPF requires that plans should provide a practical basis within which decisions on planning applications can be made with a high degree of predictability and the PPG that policies in a neighbourhood plan should be drafted with sufficient clarity that a decision maker can apply them consistently. The policy as it stands leaves the term 'sustainable development' too open to interpretation. This is not helped by the fact that there is no discussion in the preamble of what is likely to be acceptable development within the settlement boundary. As such the policy as written fails to meet the Basic Condition No 1.

j) As with policy 10 care needs to be taken that the modification to the policy simply interprets sustainable development and does not seek to change the intention of the policy. Referring to sustainability principles set out in the NPPF would avoid the risk of using some other definition. I recommend that the following modifications or similar are made.

**Recommendation 19 –**

**19A – Add text to the preamble after the new paragraph proposed in the modification at 18B to set out what development is likely to be acceptable within the settlement boundary.**

**19B - Reword the policy to state:**

***“Within the settlement boundary for Langford defined on the Policies and Proposals Map development of housing, business and community services appropriate to the scale and character of the village, its countryside setting and the principles of sustainable development set out in the National Planning Policy Framework will be supported.”***

**6.5 Section 4 Monitoring and Review**

6.5.1 In the same way that the Framework at paragraph 153 requires local plans to be kept under review good practice would suggest that the delivery of Neighbourhood Plans should be monitored and reviewed. To that end section 4 of the LUNP sets out the basic intention but the clarity of the section could be improved by structuring it in 3 paragraphs dealing with how the plan will be delivered, monitoring and review. The LUNP needs to acknowledge that as a statutory plan which forms part of the development plan a key part of delivery is via policy implementation through the management of development and change. The concept of monitoring could be better introduced by relocating the first paragraph in Appendix B to section 4 and making it clear that the District and Parish Councils will work together to monitor progress before ending with the commitment to review.

6.5.2 Appendix B is generally a comprehensive approach to monitoring and goes much further than many neighbourhood plans in defining what will be monitored and how it will work. I do however have a concern about a couple of specific targets. Firstly the target

which states “all new homes to be built to high sustainability standards” is unclear, as was the case with the policies at 6.4.10 and 6.4.12,. What is the high sustainability standard expected – as written this would not be a specific and measurable target. Secondly the target that states “appropriate development within the settlement boundary supported” is vague and ill-defined and again difficult to monitor. These targets should be sharpened up so that they can be effectively monitored.

### **Recommendation 20 –**

**20A** - Insert new paragraph at the start of section 4 to read – “*Once the Neighbourhood Plan has been ‘made’ by Maldon District Council the Council will determine all planning applications and other proposals in the light of policies set out in the plan. Similarly the Parish Council will look to apply the Plan’s policies in its decision making. Applicants will be expected to demonstrate in their applications how they conform to the neighbourhood plan policies*”.

**20B** – relocate the first paragraph of Appendix B to follow the above insert.

**20C** – relocate the paragraph commencing “Due to the National ...”.to follow the paragraph ending “If necessary the neighbourhood plan will be formally reviewed”

**20D** – Revise the two targets referred to in 6.5.2 to be specific and measurable reflecting new wording of policies 10 and 12.

## **6.6 Other matters**

Essex County Council in its representation at the Reg16 stage proposed that a new policy be added to the plan regarding the use of Sustainable Urban Drainage systems in all new development. Whilst I understand the wish to see this included, procedurally it is not possible to recommend that a completely new policy is added at this stage. To do so would require the Parish Council to resubmit the plan. I suggest that the Parish Council consider this policy matter in a future review of the neighbourhood plan.

## **7. Referendum**

7.1 Subject to the recommended modifications set out above being completed, it is appropriate that the Langford and Ulting Neighbourhood Plan should proceed to a Referendum.

7.2 I am required to consider whether the Referendum Area should be synonymous with the Langford and Ulting Neighbourhood Area or extended beyond it.

7.3 The Neighbourhood Area mirrors the Parish boundary and, whilst I understand that residents over a wider area, may look to Langford particularly for employment, I do not consider that this alone would warrant extending the area.

7.4 Moreover given that the Plan does not propose any major allocations of land that could be considered to have a significant impact on the adjoining Parishes I do not consider that residents of those Parishes need to be given the opportunity to vote in the

referendum.

7.5 Accordingly, I consider that it is unnecessary to recommend any other referendum area than the Neighbourhood Area and no evidence has been submitted to suggest any alternative approach.

**Recommendation 21**

**I recommend to Maldon District Council that the Neighbourhood Plan, modified as specified above, should proceed to a Referendum based on the Langford and Ulting Neighbourhood Area as designated by the Council on 24 April 2013.**

**Peter D Biggers 15<sup>th</sup> April 2016**  
**Independent Examiner**  
**Argyle Planning Consultancy Ltd**

## Appendix 1 – Letter from Maldon District Council to the Examiner Regarding the Heybridge Parish Council Representation on the Neighbourhood Plan Area.

4 March 2016

Enquiries to: John Somers  
Email: [john.somers@maldon.gov.uk](mailto:john.somers@maldon.gov.uk)

Dear Sir

### RE: Langford and Ulting Neighbourhood Plan Reg 16 Consultation

The District Council has been working closely with the Langford and Ulting Parish Council in the formulation of a Neighbourhood Plan which covers both the parishes of Langford and Ulting.

The Council is generally supportive of the Langford and Ulting Neighbourhood Plan and recommend that the plan is in a state where it can be recommended for referendum. Due to the general agreement of the plans content and policies, we believe that it would be most appropriate that the Neighbourhood Plan would be independently examined by written representation.

We note a response which has been raised by Heybridge Parish Council objecting to the Neighbourhood Plan Boundary on the basis that the boundary runs through part of the Heybridge Garden Suburb Urban Extension.

The concerns raised by Heybridge Parish Council may be as a result of the P&L Committee January which passed a resolution to refuse the Heybridge Parish Council Neighbourhood Plan Boundary which ran through the southern area of the Garden Suburb which contains the Local Centre as well as community facilities and housing. The Neighbourhood Plan boundary was subsequently amended to exclude the urban extension as it was felt in this instance that the Heybridge Neighbourhood Plan could not plan holistically for the Garden Suburb which was at an advanced stage.

The Langford and Ulting Neighbourhood Plan Boundary was approved by the District Council in 2013, prior to the adoption of a boundary for the North Heybridge Garden Suburb. The North Heybridge Garden Suburb now has an adopted masterplan and design code which does contain part of the Langford Parish Area whereby a small section of the relief road, greenspace and the Flood Alleviation Scheme are located. Although we agree in principal that the North Heybridge Garden Suburb is at a well advanced stage, and that Neighbourhood Plans should exclude any area within the North Heybridge Garden Suburb, we would suggest that additional text is written into the Langford and Ulting Neighbourhood Plan. This text should specifically state that where the Neighbourhood Plan boundary covers the Urban Extension that the

Neighbourhood Plan policies are not applicable and that the North Heybridge Masterplan and policies of the local plan apply.

It is of note that Heybridge Parish Council did not object to the Langford and Ulting Neighbourhood Plan boundary in the Regulation 6 consultation held. The Langford and Ulting Neighbourhood Plan does not contain policies on the North Heybridge Garden suburb and the District Council are therefore confident that the Langford and Ulting Neighbourhood Plan will not cause conflict to the holistically planned approach of the North Heybridge Garden Suburb which will be made clear by additional wording to this effect in the Neighbourhood Plan.

Yours Sincerely,



John Somers  
Senior Planning Officer