Maldon District Council

Examination of the Maldon District Local Development Plan

Schedule of Further Matters, Issues and Questions

15 November 2016

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The following matters were set out by the previous Inspector. It is now necessary to explore them further in the light of updated information and evidence. However, the hearings will not be a re-run of what has gone before, and debate at the hearings will be restricted to the questions set out below. Hearing statements must also focus strictly on these questions.

Matters 2, 3, 4 and 5: Strategic housing growth

Issue: Are the policies for strategic housing growth justified, effective and consistent with national policy?

Questions

The Housing Market Area

1. The Council identifies Maldon district as one Housing Market Area. At present I have some reservations about the extent to which the evidence supports this position. Is it a justified stance to take?

2. Has the Council explored the alternative proposition that Maldon forms part of one wider Housing Market Area? If not, why not?

The Objective Assessment of Housing Need (OAN)

3. The Council’s paper ‘Implications of the DCLG 2014-based household projections for the objectively assessed housing needs of Maldon District’ (August 2016) [EB106] concludes that the best estimate of the OAN is 260 dwellings per annum (dpa). The Council considers the OAN to be 310 dpa. Does the OAN figure of 310 dpa take account of:
   a) The objective of Policy E1 of creating a minimum of 2,000 new jobs in the district by 2029? Is the level of housing planned for sufficient to support the workforce needed?
   b) Any suppression of household formation rates that is not captured in past trends (for example, formation rates may have been suppressed historically by under-supply and worsening affordability of housing), if any such suppression has occurred?
   c) Market signals (such as land prices and housing affordability)?

Housing delivery and infrastructure

4. Does Policy S2 actually/specifically allocate the sites listed? Should it be more explicit, for effectiveness?

5. Main modifications 088, 089, 090 and 091 are intended to restrict new housing development in Maldon, Heybridge and Burnham because of school and highway capacity limitations. Is the wording used in main modification 088 justified and effective? In particular:
   a) Does the term “development in excess of the LDP requirements” mean the figures for allocations set out in Policy S2? If so, should this be made explicit?
   b) Given the evidence about school and highway capacity, should unequivocal caps on development be set in Maldon, Heybridge and Burnham?
6. **Since the previous hearings were held**, have any planning permissions been granted in/around Maldon, Heybridge and/or Burnham for new homes **over and above** the level of housing assigned to the specific site allocations in Policy S2 of the Local Development Plan, either on the strategic allocations themselves or on other sites not specifically referred to in Policy S2? If so:
   a) Please provide full details
   b) Where the permission relates to an allocated site, should the table in Policy S2 be updated?
   c) I have been told that planning permission has been granted for Site S2(i) in Burnham, but that the area of the permission does not match the area of the allocation. Should Policy S2 be amended to reflect this (via a consequential change to the Policies Map)?

7. From main modification 074, the Council makes an allowance of 300 windfall dwellings plus 741 dwellings from ‘existing commitments’, which includes “suitable sites identified in the SHLAA”, within its overall supply of land for housing. In the light of main modifications 088, 089, 090 and 091, it is assumed that none/only a very limited amount of this is likely to be delivered in Maldon, Heybridge and Burnham.
   a) Is that right?
   b) Does the overall supply of land for housing include any land within Maldon, Heybridge and Burnham that are not specific allocations in Policy S2?
   c) Are any of the ‘existing commitments’ within Maldon, Heybridge and Burnham?
   d) Does the SHLAA identify a sufficient amount of land outside of Maldon, Heybridge and Burnham to deliver the 741 dwellings set out in Policy S2?
   e) What is the record of windfall delivery outside of Maldon, Heybridge and Burnham?

*Overall, in responding to the questions above, I ask that the Council makes wholly clear the totality of housing that has already been permitted in/around Maldon, Heybridge and Burnham and the totality of additional housing to be brought forward in those areas through Policy S2 of the Plan.*

8. In the light of the above, taking account of the new school places and highways works planned or implemented, and the confirmation of the local education authority that Burnham-on-Crouch Primary School has a capacity of 390 places rather than 417, will sufficient school places be available to accommodate the new housing and will the highway network capacity be sufficient?

*I would be particularly grateful if the highways authority and the local education authority would provide their view on the above question, taking account of the updated information and responses from the Council from the preceding questions. Succinct and up-to-date position statements from the highway authority, local education authority and the Council would greatly assist, as would a Statement of Common Ground. I would also greatly appreciate attendance by the highway authority and the local education authority at the hearing session for this matter.*

9. From the ‘Five Year Housing Land Supply Statement’ (August 2016) [EB109] it is apparent that expectations about the timing of housing delivery have altered from that set out in the Council’s Infrastructure Phasing Plan (submitted with the Council’s hearing statement in January 2015). I ask that the Council provides an update to the Infrastructure Phasing Plan, showing current expectations **across the whole Plan period** for:
a) housing delivery from the Strategic Sites (which should tie-in with EB109 and the housing trajectory – whichever of the two is correct – see question 14 below); and
b) infrastructure delivery.

For each Strategic Site and infrastructure item, the addition of some commentary on the present position would be helpful (e.g. whether planning permission has been granted, whether a legal agreement remains to be signed, what funding sources are expected to be drawn on etc).

10. Should Policy S4 be amended as Natural England suggests in its response relating to main modifications 009 and 062? Also, should the last sentence of main modification 060 be amended in line with Natural England’s comments? (This question also applies to other instances where the Plan/main modifications suggest that a HRA is required in relation to non-European sites)

The five year supply of land for new housing

11. Taking account of the present position, is the contribution now anticipated from the Strategic Sites to the five year land supply realistic?

12. Is there compelling evidence that windfall sites have consistently become available in the District outside of Maldon, Heybridge and Burnham? If so, please provide details. If not, what is the justification for the windfall allowance in the five year supply?

13. I am not wholly clear about the plans for the expansion of the Plume Academy. Please would the Council explain:
   a) Where and when the school will be expanded, and how (whether it is a question of a new building on a new site, or whether new places will somehow be created on the existing site, or precisely what is intended)
   b) Whether or not the Primrose Meadow site has a role to play here. What use, precisely, is the Primrose Meadow site allocated for? Policy I3 (as submitted) is vague on this point. Also, it appears, in effect, to give development plan status to a planning brief. Is that a sound approach?

The housing trajectory

14. Main modification 077 is a revision to the housing trajectory. However, the delivery shown from allocated sites for the years 2016/17, 17/18 and 18/19 does not match the figures given in Appendix G of the Council’s ‘Five year housing land supply statement 2015/16’ (August 2016) [EB109]. Is there a reason for this? If not, which is correct and what are the implications for the five year housing land supply calculations?
Matter 8: Affordable housing, housing mix and specialist needs

Issue: Are the policies for affordable housing, housing mix and specialist needs housing justified, effective and consistent with national policy?

Questions

Affordable housing

15. From the previous hearings, I am not entirely clear about one or two points concerning affordable housing. I ask the Council to clarify:
   a) The precise level of affordable housing need identified over the Plan period and the source(s) of evidence relied on.
   b) The level of affordable housing delivery anticipated from the various sources of supply (including this Plan, the Rural Allocations Plan etc), taking account of the main modifications put forward by the Council to Policy H1 (notably 099).

16. Policy H1 appears, in effect, to give development plan status to the SHMA, the Affordable Housing Guide, “relevant strategies of the Council” and the Maldon Strategic Housing SPD (as does Policy H2 in relation to the latter). Is that a sound approach?

17. What is the justification for main modifications 048 and 049?

Matter 9: Provision for Travellers

Issue: Is Policy H6 justified, effective and consistent with national policy?

Questions

18. The Secretary of State’s letter dated 6 March 2016 makes it clear that Policy H6 as submitted is not consistent with national policy. The Council has put forward a number of main modifications to Policy H6 and its supporting text.

   Main modification 127 introduces to Policy H6 a commitment to produce a development plan which will allocate 32 additional traveller pitches.
   a) Is the deferment of allocating pitches to a separate plan a sound approach? In answering this, I ask that the Council also provides an update about the separate plan – the work undertaken so far, what remains to be done and the timescales involved.
   b) The 32 pitch figure is based on the Essex Gypsy and Traveller and Travelling Showpeople Accommodation Assessment (July 2014) [EB007b]. Is this an adequately robust evidential basis?
   c) The definition of ‘Gypsies and Travellers’ used in the national Planning Policy for Traveller Sites now omits from this definition people who have ceased to travel permanently. The Essex Gypsy and Traveller and Travelling Showpeople Accommodation Assessment (July 2014) [EB007b] is based on an earlier definition which includes people who have ceased to travel permanently. What are the implications of this for Policy H6 and its soundness?
19. Main modification 079 reserves existing Traveller sites for use by Travellers. Is this a sound approach?

20. Main modifications 080, 072, 081 and (part of) 128 relate to the criteria for assessing applications for Traveller sites and the ‘sequential approach’. Taking account of these main modifications:
   a) are the criteria justified and consistent with national policy
   b) is the ‘sequential approach’ justified and consistent with national policy

The following matters are new – they have not been considered at previous hearings. Nonetheless, both statements and contributions at the hearings should focus on the questions set out below. Where respondents identify a deficiency in the Plan they should make clear how it should be changed.

Matter 11: Economic prosperity

Issue: Are the policies for economic prosperity justified, effective and consistent with national policy?

Questions

Employment

21. The NPPF says that the evidence base of Local Plans should assess the needs for land or floorspace for economic development, including both the quantitative and qualitative needs for all foreseeable types of economic activity over the plan period.
   a) For the avoidance of doubt, does the Council rely (at least predominantly) on the ‘Employment Evidence and Policy Update’ (July 2015) [EB102a] in this regard?
   b) What are the quantitative and qualitative needs for all foreseeable types of economic activity over the plan period? I ask that figures are given for specific employment types.

22. Objective 3 of the Plan is to “maintain a diverse, vibrant, viable economy, encouraging diversification and enhancement of skills and employment opportunities”. Policy E1 sets out the aim of creating at least 2,000 net additional jobs in the District by 2029.
   a) Will 2,000 net additional jobs deliver Objective 3?
   b) What is the justification for this particular figure?
   c) Does it take into account the same level of population growth as that informing the objective assessment of housing need?

23. In the light of the ‘Employment Evidence and Policy Update’ (July 2015) [EB102a] the Council has put forward main modification 119. This clarifies that it is the Council’s intention to provide around 11 hectares of further employment land over the plan period. Eight hectares is allocated through Policy E1, and main modification 119 says the remaining requirement will be delivered through the Site Allocations DPD.
   a) Should Policy S2 be modified to reflect the 11 hectare figure?
   b) Is 11 hectares of land sufficient to support the 2,000 net additional jobs planned to be created?
c) What is the justification for deferring the allocation of the remaining requirement of roughly 3 hectares to the Site Allocations DPD? Should this land be allocated in this Plan?

24. Policy E1 identifies existing employment sites and reserves them for employment development.
   a) Do these sites remain suitable to meet identified needs?
   b) How have the appropriate uses listed been arrived at?

25. Three sites are allocated in Policy E1 for new employment space.
   a) What site selection process has been used in choosing these sites?
   b) How have the appropriate uses listed been arrived at?

   Are these sites:
   c) confirmed by all of the landowners involved as being available for the use proposed?
   d) justified and appropriate in terms of the likely impacts of the development?
   e) deliverable, having regard to the provision of the necessary infrastructure and services, and any environmental or other constraints?

Retail

26. In the light of the Maldon Retail Study (July 2015) [EB103] main modification 121 identifies the comparison and convenience retail floorspace capacity of, respectively, 2,800 – 5,000 sqm and 3,400 – 4,800 sqm.
   a) Is the evidence in the Retail Study adequately robust and are these figures justified?
   b) Does the Retail Study take into account the same level of population growth as that informing the objective assessment of housing need?

27. The Council’s approach (set out in main modification 121) is to not allocate land to reflect the identified capacities now, but to monitor the effects of the Aquila retail development for two years after its initial opening. The Council’s retail evidence will then be reviewed, and land for retail uses will then be allocated if that review indicates a need.
   a) Is that right?
   b) Is this approach in line with the advice of the Retail Study – is it a justified approach?
   c) For the avoidance of doubt, I ask that the Council provides details of the Aquila development – where it is, precisely what the extant planning permission allows, and what the current position is.

28. Main modification 122 allows major new retail development “in exceptional circumstances”. In the light of the findings in the Retail Study, in what sort of circumstances might such major new retail development be acceptable?

29. Main modification 026 says that the Council will apply flexibility when considering the sequential test in relation to community hubs and local centres in the Garden Suburbs and Strategic Allocations.
   a) How? What sort of flexibility does the Council have in mind?
   b) Why? What is the justification for this approach?
30. Main modification 122 introduces new Local Impact Thresholds for the submission of impact assessments. What is the justification for this approach and the thresholds set?

31. Policy E2 refers to Town Centre Areas, Primary Retail Frontages and Secondary Retail Frontages.
   a) Should it explicitly say that these are identified on the Policies Map?
   b) What process has led to the precise delineation of the Town Centres and the Primary and Secondary Frontages?
   c) In Primary Retail Frontages, non-A1 uses are resisted unless the development will not lead to a new continuous frontage of three or more non-A1 uses. Why three? What is the justification for this threshold?

Community services and facilities

32. Policy E3 requires new development proposals to contribute towards the provision of community facilities where the development will lead to an increased need.
   a) What kind of development does the Council have in mind here? A house extension adding a bedroom might increase the need for community facilities.
   b) Has the impact on viability of applying this requirement been considered?

Agricultural and rural diversification

33. Does Policy E4 do enough to support agricultural and rural diversification?

Tourism

34. Does Policy E5 do enough to support tourism?

Matter 12: Design and climate change

Issue: Are the policies relating to design and climate change justified, effective and consistent with national policy?

Questions

Design quality and built environment

35. Policy D1 appears, in effect, to give development plan status to the Council’s adopted parking standards, the Maldon District Design Guide SPD and to village design statements. Is this appropriate?

Climate change and environmental impact of new development

36. The Ministerial Statement (MS) of 25 March 2015 set out a new approach for the setting of technical standards for new housing comprising new additional Building Regulations on water and access and a new national space standard.

The MS states that “the optional new national technical standards should only be required through any new Local Plan policies if they address a clearly evidenced need and where the impact on viability has been considered ...”
“From the date of the Deregulation Bill 2015 is given Royal Assent [26 March 2015] Local planning authorities should not set in their emerging Local Plans or supplementary planning documents, any additional local technical standards or requirements relating to the construction, internal layout or performance of new dwellings. This includes any policy requiring any level of the Code for Sustainable Homes to be achieved by new development; the government has now withdrawn the code …”

For energy performance the MS states that:
- “when the amendment (to the Planning and Energy Act 2008) is commenced, the energy performance requirements in the Building Regulations will be set at a level equivalent to the (outgoing) Code for Sustainable Homes Level 4. Until the amendment is commenced we would expect local planning authorities to take this statement of the government’s intentions into account in applying existing policies and not set conditions with requirements above a Code Level 4 equivalent.
- until the commencement of amendments LPAs can continue to apply policies in Local Plans which require compliance with energy requirements of the Building Regulations.”

The MS sets out a commitment to implementing the zero carbon homes standard in 2016 with an exemption for small housing sites of 10 units or fewer.

The Planning Practice Guidance provides further detailed guidance on the standards that can be applied, if justified:
- the proportion of new dwellings to comply with the requirements of the Building Regulations for accessible and adaptable [M4(2)] and/or wheelchair user [M4(3)]
- **Water efficiency standards** - the optional requirement of 110 litres/person/day (compared to the mandatory Building Regulations standard of 125 litres/person/day
- **Internal space standard** - only by reference to the Nationally Described Space Standard

Main modification 016 deletes the reference in Policy D2 to the Code for Sustainable Homes.

a) In the context of the MS, are the following requirements set out in Policy D2 justified, effective and consistent with national policy?
   (i) That development shall minimise energy demand and greenhouse gas emissions, and maximise the use of energy from decentralised and renewable or low-carbon sources (criterion 1)
   (ii) That all non-residential development should achieve a minimum of BREEAM ‘very good’ rating or be supported by a bespoke assessment that demonstrates environmental performance results above Building Regulations requirements (criterion 3)
   (iii) That all developments will be expected to implement zero carbon build standards in accordance with national planning policy and guidance (criterion 4)
   (iv) That development will maximise the use of building materials from sustainable sources and apply sustainable construction methods (criterion 5)
   (v) That development will seek to reduce water consumption (criterion 6)
b) Has the impact of applying these requirements on viability and land supply been considered?

**Conservation and heritage assets**

37. Is Policy D3 justified, effective and consistent with national policy? In particular:
   a) Should criterion 1) refer to the *appearance* of the heritage asset?
   b) Is it appropriate to require that the change of use, extension, addition, alteration and demolition of any heritage asset or any building within a Conservation Area is clearly and convincingly justified?
   c) Does the policy properly reflect the two-tier approach set out in the NPPF (paragraphs 132, 133 and 134) relating to ‘substantial harm’ and ‘less than substantial harm’?

**Renewable and low carbon energy generation**

38. Policy D4 supports renewable and low-carbon energy projects, including wind energy developments. However, a Written Ministerial Statement was published on 18 June 2015. This makes it clear that planning permission should only be granted for wind energy developments if:
   a) the site is in an area identified as suitable for wind energy development in a Local or Neighbourhood Plan; and
   b) following consultation, it can be demonstrated that the planning impacts identified by affected communities have been fully addressed and therefore the proposal has their backing.

The PPG has been updated to reflect this.

At present, it appears that Policy D4 is not consistent with the most recent expression of Government planning policy for onshore wind development. How does the Council intend to rectify this issue?

**Advertisements**

39. The Advertisement Regulations state that "A local planning authority shall exercise its powers under these Regulations in the interests of amenity and public safety". In this context:
   a) is it appropriate for criterion 3) of Policy D6 to seek to consider light pollution and functional need?
   b) is it appropriate for criterion 3) of Policy D6 to apply a blanket restriction on internally illuminated signs where a Listed Building or a Conservation Area is affected? Is a blanket restriction on illuminated signs in residential areas justified? Instead should decision-making be informed by an assessment of the effect of a particular proposal the on the Listed Building, Conservation Area or residential area concerned?
   c) Is it appropriate for criterion 4) to consider the need for the advertisement?
Matter 13: Natural environment and green infrastructure

Issue: Are the policies relating to green infrastructure justified, effective and consistent with national policy?

Questions

Green infrastructure network

40. Policy N1 says that “a strategic multi-functional network of green infrastructure will be identified ...”. Where, when, how and by whom? Is it the intention that this should relate to the various ‘local open spaces and green infrastructure’ shown on the Policies Map? If so, should Policy N1 be more explicit, for effectiveness? Please explain the approach here.

41. Policy N1 appears to relate to both existing and proposed green infrastructure. Is any new green infrastructure proposed as part of this Plan? Again, please explain the approach here.

42. Policy N1 says that all development must “seek to meet local standards” for green infrastructure. To which local standards does this refer? Should any such standards be part of this Plan rather than set out elsewhere?

Open space, sport and leisure

43. Policy N3 requires all development to contribute towards open space, sports, community and leisure facilities in one way or another. Is that appropriate and justified?

44. The first paragraph of Policy N3 requires all developments to contribute towards improving the provision, quality and/or accessibility of open space, sports, community and leisure facilities. The second paragraph says that developments should not increase existing deficiencies.
   a) Is there an inconsistency here?
   b) Does the term ‘deficiencies’ refer to quantity, quality or both? Should this be clarified, for effectiveness?

45. Where proposals result in the loss of open space or impact negatively on it, Policy N3 seeks alternative and improved provision. Is this consistent with the NPPF (paragraph 74)?

46. Paragraph 6.25 says that “all open spaces are designated in the Proposals Map”.
   a) Does Policy N3 relate just to the open spaces shown on the Policies Map? Should this be clarified either in the policy or its supporting paragraphs?
   b) In the Regulations, it is referred to as the ‘Policies Map’ rather than Proposals Map. I suggest that all references to the map be amended accordingly.
   c) The Policies Map is the geographical representation of the policies in the Plan. In this context, if open spaces are to be shown on the Policies Map, should they be referred to in the policy itself? Should the policy say something along the lines of “Open spaces, sports and leisure facilities are identified on the Policies Map”?
Matter 14: Transport and access

Issue: Are the policies relating to transport and access justified, effective and consistent with national policy?

Questions

Sustainable transport

47. Does Policy T1 do enough to ensure that any necessary highways improvements are made, particularly given the issues around Maldon and Heybridge? Should it include more specific commitments?

Accessibility

48. Policy T2 requires all developments to meet the criteria listed. Is that appropriate and justified?

49. Policy T2 requires that parking facilities be in accordance with the Council’s parking standards, which it appears are set out in the Vehicle Parking Standards SPD. In effect, it gives development plan status to a SPD. Is that a justified approach? Should the parking standards be set out in this Plan?

Matter 15: Implementation and monitoring

Issue: Are the policies relating to implementation and monitoring justified, effective and consistent with national policy?

Questions

50. Does Policy I1 do enough to ensure that infrastructure necessary to deliver the Plan is delivered when it is needed? Should it include more specific commitments?

51. Main modification 055 deletes from Policy I2 the Council’s support for a new community hospital. Paragraph 8.27 of the Plan says that St Peter’s Hospital in Maldon is no longer able to provide an adequate setting for delivering modern, flexible and accessible healthcare services. In this context, does the Plan (including through the revised text set out in main modification 055) do enough to ensure that the District is provided with sufficient healthcare facilities?