

Planning Policy Advice Note V4

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1. National Planning Policy Framework and the presumption in favour of sustainable development

The Council is required to determine planning applications in accordance with its adopted Development Plan unless material considerations indicate otherwise (Section 38(6) of the Planning and Compulsory Purchase Act 2004 (PCPA 2004) and Section 70(2) of the Town and Country Planning Act 1990 (TCPA1990)). The National Planning Policy Framework (NPPF) is a material consideration in planning decisions (NPPF paragraph 196).

Paragraph 197 of the NPPF states that local authorities should apply the 'presumption in favour of sustainable development' when determining development proposals. Paragraph 14 of the NPPF sets out what the 'presumption in favour of sustainable development' means both in terms of plan-making and decision-taking. For decision-taking in particular, this means:

- approving development proposals that accord with the Development Plan without delay; and
- where the Development Plan is absent, silent or relevant policies are out of date, permission should be granted unless:
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
 - specific policies in this Framework (such as designated heritage assets or Sites of Special Scientific Interest) indicate that development should be restricted.

2. The Maldon District Replacement Local Plan

The Maldon District Replacement Local Plan (RLP) was adopted in November 2005 and the 'saved policies' still form the statutory Development Plan for the District. However, the RLP was prepared in accordance with Part II of the Town and Country Planning Act 1990 and the Planning and Compensation Act 1991. As the RLP was produced using national planning policy prior to the 2004 Act, in accordance with the requirements of the NPPF Para 215, due weight should only be given to relevant saved policies according to their degree of consistency with the NPPF. The greater the consistency with the NPPF, the greater the weight that can be given to the existing saved policies in the RLP. The Council has undertaken an assessment of the consistency of key RLP policies with the NPPF, which was endorsed by Planning and Licensing Committee on the 3 October 2013 (Item 9, Appendix 2).

3. The Maldon District Local Development Plan (LDP)

The LDP is the emerging Plan for the District and will constitute the new up-to-date statutory Development Plan once adopted. The Council has made a number of important modifications to the LDP following submission in April 2014. An updated version of the LDP including these changes will shortly be available. In the meantime please contact the policy team for more details.

The LDP, together with all relevant evidence and supporting documentation, were submitted to the Secretary of State for Examination-in-Public (EIP) on 25 April 2014. Public hearing sessions for the housing and infrastructure related policies (LDP Policy S1, S2, S3, S4, S6, S7, S8, H1, H2, H3, H5, H6, I1 and I2) took place between 20th January and 4th February 2015. Interim findings on the soundness and legal compliance of the housing and infrastructure policies of the Plan were issued by the Inspector on Tuesday 12th May 2015, followed by two letters of further correspondence IED16 and IED17.

In summary, the Inspector recommended the LDP to be withdrawn because Policy H6 (Provision for Travellers) and, by implication, the LDP is unsound and that the Inspector cannot rectify this through recommending main modifications or by suspending the Examination to give time for the Council to resolve the unsoundness. The Inspector also believes that it would not be *'relevant or helpful to make any comments now on the other housing and legal compliance matters [including the Council's objectively assessed housing need and proposed strategic housing allocations] because they would soon be overtaken by events'* (paragraph 9 of the Inspector's Interim Findings). The Inspector, however, noted the Council's land supply position is rapidly improving as a result of its proactive approach to bring forward LDP allocations and other housing sites (paragraph 6 of the Inspector's Interim Findings), and stated that *'whatever I do, or do not do, new homes on the allocated market housing sites will be built and the housing land that the Council proposes as being necessary for the settled community will largely be provided'* (IED17).

In response to the Inspector's Interim Findings (MDC's further response to Inspector's Interim Findings, IED17, 21 May 2015) the Council requested the Inspector to provide his interim findings on all policies subject to the Examination-in-Public hearing sessions in January and February 2015. The Council also suggested that the EIP should continue following receipt of the full interim findings, the finalisation and publication of the retail and employment studies, and an update of the identified need for Traveller pitches in the District. The Council requested to the Secretary of State to call-in the Plan on the grounds that the interim findings represent a disproportionate response in terms of the Inspector's interpretation of national guidance.

The Secretary of State formally decided to call-in the Maldon District LDP under Section 21 of the Planning and Compulsory Purchase Act 2004. The Department for Communities and Local Government (DCLG) has now appointed a project lead to project manage the process *'to test whether the planning inspector has taken a proportionate and balanced view on the local plan as a whole in the light of national planning policy.'* The Department is considering the plan thoroughly and will issue its decision as soon as is possible. To assist with this process DCLG have asked an experienced Inspector to undertake an independent review of the Maldon District Local Development Plan in order to inform any future decisions on the plan. The Council expects the findings of this review at the end of October.

4. Status of the relevant LDP policies

The NPPF (paragraph 216) states that decision makers should give weight to relevant policies in emerging plans (such as the submitted Maldon District LDP), according to the stage of preparation, the extent of unresolved objections to relevant policies, and the degree of consistency with the NPPF. The more advanced the stage of preparation, the greater the weight that can be given; the less significant the unresolved objections, the greater the weight that may be given; and the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given.

In terms of the progress of the LDP, the Plan has been published and submitted for Examination-in-Public. It has been the subject of extensive consultation at each stage of the Plan's preparation. Public hearing sessions for the housing and infrastructure related policies (LDP Policy S1, S2, S3, S4, S6, S7, S8, H1, H2, H3, H5, H6, I1 and I2) took place between 20th January and 4th February 2015. The LDP, and in particular the policies which have been subject to public hearings, are therefore at a very advanced stage in their preparation.

With regards to compliance with the NPPF, the LDP policies have been prepared in line with the NPPF requirements and are supported by a comprehensive and up-to-date evidence base, Sustainability Appraisal and extensive public consultation. The Inspector's Interim Findings made no comments in relation to the soundness or legal compliance of any aspects of the LDP other than the Gypsy and Travellers' provision. Therefore it is reasonable for the Council to assume that the relevant LDP policies (as amended) with the exception of Policy H6 can be attributed weight in decision making.

A number of concerns were raised by the Inspector during the examination on a variety of issues surrounding the soundness and legal compliance of the LDP policies, and there are other objections made to the LDP. Additional information has been produced during and after the hearing sessions by the Council and other participants to address these concerns and objections. This includes further clarification on the extent of the Maldon Housing Market Area, additional viability information in relation to the Garden Suburbs and Strategic Allocations. A number of these objections have also been resolved through recent progress on strategic allocations including the granting of permission on a number of strategic sites.

Based on the above considerations the Council is satisfied that material weight should be given to LDP Policies S1, S2, S3, S4, S6, S7, S8, H1, H2, H3, H5, I1 and I2 in decision making.

5. Update to the Five Year Supply of Deliverable Housing Land

The Council has undertaken a full assessment of the Five Year Housing Land Supply (FYHLS) in the District and has concluded that the Council is able to demonstrate a supply of specific deliverable sites sufficient to provide for more than five years' worth of housing against the Council's identified housing requirements. The latest FYHLS was published in a statement by the Council in July 2015 and supersedes the previous version dated May 2014, and the interim update in January 2015. The FYHLS was then updated in September to include the most up-to-date assessment of housing delivery rates for the LDP Strategic Allocations.

In accordance with the Council's updated September 2015 position, 2,127 dwellings are deemed to be deliverable over the next five years (including allowance for a 5% local slippage rate which has been applied to the total number of housing deemed deliverable in the next five years). This represents a total of 6 years' worth of housing land supply against an identified housing target of 1,777 dwellings over the next five years (including allowance for a 5% buffer applied in accordance with NPPF paragraph 47).

The Council can therefore demonstrate 6 years housing land supply against its identified housing targets.

There are two main factors behind the rapid improvement of the Council's housing supply. Firstly, in July 2014 the Council resolved to invite and proactively encourage planning applications which are in accordance with Policy S2 of the LDP. The Council also resolved to proactively encourage planning applications which are considered to be sustainable, will contribute positively to the five year supply of deliverable housing land and will assist in demonstrating the deliverability of the LDP (Council minute 245 refers). As a result of the Council's proactive approach, by the end of March 2015 there were a total of 944 dwellings with extent planning permission compared to the figure of 497 dwellings at the end of March 2014.

Secondly, the Council has made significant progress in bringing forward strategic allocations identified in the LDP which will deliver significant amounts of housing in the next five years (See Appendix G of the latest Five Year Housing Land Supply Statement for further details of progress and phasing of delivery for the five year period). There are in total 11 strategic housing allocations in the LDP and planning permission has already been granted on three of these sites for a total of 1,248 new homes. Planning applications have also been submitted on five other allocated sites (a total of 1,595 new homes), and the Council expects planning applications on the three remaining sites in the near future (net 540 new homes).

Given the progress made on these strategic allocations and the Council's intention to attribute weight to relevant housing policies in the LDP (see section 4 above), the Council considers that it is appropriate to start including the LDP strategic allocations and windfall allowance into the Council's five year housing land supply calculation. As such, the Council is satisfied that the current 5 Year Housing Land position means that Paragraph 49 on the NPPF is not engaged. Planning applications should now be considered on the basis that the Council can demonstrate 6 years' worth of deliverable housing land. With a five year housing land supply in place, the Council is in a stronger position to refuse development proposals which do not accord with the LDP, and importantly a stronger position to refuse applications which could threaten the delivery of sites allocated in the LDP and associated

infrastructure. This position however does not automatically prohibit all development outside of settlement boundaries. Planning applications should be assessed on their own merits, taking into account relevant planning policies in the Replacement Local Plan, LDP, the National Planning Policy Framework, and other material considerations.

Phasing of LDP Strategic Allocations (Based on latest September 2015 estimates)

Ref.	Site	Capacity	Planning progress	Estimated annual delivery **					Net 5-Year Land Supply
				2015/16	2016/17	2017/18	2018/19	2019/20	
S2(a)	South of Maldon (South of Limebrook Way)	1000	Outline Permission granted subject to S106	0	0	25	40	85	150
S2(b)	South of Maldon (Wycke Hill North)	300	Application expected imminently	0	0	50	50	50	150
S2(c) *	South of Maldon (Wycke Hill South)	117	Outline Permission granted, reserved matters application refused	0	0	39	39	39	117
S2(d)	North of Heybridge	1035	Application received and pending consideration	0	0	62	88	88	238
S2(e)	Land to the North of Holloway Road	100	Application received and pending consideration	0	0	34	33	33	100
S2(f)	West of Broad Street Green Road	100	Application received and pending consideration	0	0	34	33	33	100
S2(g) *	South of Maldon (Park Drive)	131	Full Permission granted. Site work started.	0	43	44	44	0	131
S2(h)	Heybridge Swifts	100	Full planning application expected imminently	0	0	0	34	33	67
S2(i)	West of Burnham-on-Crouch	180	Application received and pending consideration	0	30	40	40	40	150
S2(j)*	North of Burnham-on-Crouch (West)	180	Application refused but principle of development accepted	0	0	50	50	50	150
S2(k)	North of Burnham-on-Crouch (East)	90	No application received	0	0	30	30	30	90
Total		3,333		0	73	408	481	481	1443

* Figures and/or phasing have been updated to reflect the Council's latest position

** Annual delivery rate based on an assumed maximum of 50 dwellings per annum per access point

There are further details on committed supply, discounted sites and the methodology used in the Council's latest Five Year Land Supply Statement (July 2015). Based on the updated delivery rates set out in the table above, the current five year supply situation is summarised in the following table (note that this updates Table 8, page 10, in the July 2015 Five Year Housing Land Supply Statement).

Total deliverable housing land supply 2013/14 - 2017/18

Source of Supply	Units
Sites with extant planning permission (including permission granted on LDP strategic sites S2(c) and S2(g); sites that are deemed potentially undeliverable are discounted)	944
Other strategic allocations identified in the LDP (see Appendix G)	1,195
Windfall Allowance	100
minus 5% slippage and non-implementation rate (* 95%)	-112
Total supply	2,127

6. Prematurity

The National Planning Policy Guidance (NPPG) states that although the weight to be attribute the emerging plans increase during the plan-making process in the context of the NPPF, arguments that an application is premature are unlikely to justify a refusal of planning permission in the context of the presumption in favour of sustainable development other than in exceptional circumstances (where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account). In accordance with National Policy Guidance (Reference ID: 21b-014-20140306) such circumstances are likely to be limited to situations within the Maldon District where:

- I. The development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or neighbourhood plan; and
- II. The development would prejudice the delivery of the emerging allocations (Policy S2) by utilising limited infrastructure capacity. This includes secondary school capacity in the Maldon and Heybridge area, as well as primary school capacity in the Burnham-on-Crouch area.

Where planning permission is refused on grounds of prematurity, the Council will need to indicate clearly how the grant of permission for the development concerned would prejudice the outcome of the plan-making process.

7. Infrastructure Capacity

As part of the LDP the Council has consulted all the relevant infrastructure providers to identify local infrastructure requirements taking into account strategic growth proposed. While the Council enjoys good working relationships with local infrastructure providers (e.g. Highways, Education, Health, Waste Water), sometimes these organisations may not be able to take a strategic view when assessing individual development proposals. In particular they may not be able to assess the cumulative impact of development proposals; they may not be able to take into account planned growth set out in the Council's Local Development Plan when advising on individual planning applications. As a local planning authority, the Council is ultimately responsible for ensuring that there will be sufficient infrastructure capacity to support the delivery of its future growth strategies. That is to say, where infrastructure providers may not be able to object to a particular development proposal, the Council could adopt a different view if this is supported by robust local evidence.

Significant infrastructure constraints have been identified in the Maldon and Heybridge area. In particular, development potential is limited by the ability of the Plume Academy to accommodate additional pupils. There are also constraints in the wider highway network (e.g. Wood Corner, Eve's Corner/Well Lane and Hatfield Peverel). Similarly, at Burnham-on-Crouch development potential is restricted by the limited capacity of local primary schools.

The LDP and the IDP have set out in detail how new infrastructure provision will be

delivered to support planned growth in the District. Policy S2 (as amended following examination hearings) states very clearly that:

‘Significant infrastructure constraints exist which will strictly limit the capacity for growth in Maldon, Heybridge and Burnham-on-Crouch in excess of that planned through the LDP. Any proposal for development in excess of the LDP requirements will need to demonstrate to the Council’s satisfaction that:

- *It will not prejudice or delay the delivery of the Garden Suburbs, Strategic Allocations, or planned infrastructure improvements; and*
- *There will be sufficient infrastructure capacity to support the development.*

Proposals which may prejudice the delivery of the LDP, either individually or cumulatively, will be resisted by the Council. ‘

It is essential when determining planning applications to consider available infrastructure capacity in accordance with amended Policy S2.

Capacity of the Plume Academy

The Council, ECC and the Plume School are working together to maintain a ‘live’ table which provides up-to-date estimates of pupil numbers from both strategic allocations and other major housing developments / applications which may affect the future capacity of the Plume Academy.

With a capacity of 1,875 school places, the Plume Academy has indicated that whilst the pupil figure is subject to small annual fluctuation, overall the school is running at capacity. An additional 2-form entry expansion has been planned as part of the LDP growth strategy (after which it is highly unlikely that there will be physical capacity for further school expansion in the future). This expansion will in theory create an additional 501 school places; these additional school places will be used to accommodate pupils generated from the new LDP allocations in the Maldon and Heybridge area. It is estimated that new strategic housing allocations will generate a minimum of 504 new pupils, with no allowance having been made for windfall or rural allocations.

While estimated pupil numbers can be affected by other factors such as housing mix and future policies adopted by the individual schools, according to the latest monitoring data, pupil numbers expected from the relevant LDP allocations is likely to be higher than originally planned due to higher housing numbers and fewer 1 or 2 bedroom dwellings in the housing mix being proposed by developers through planning applications on strategic allocations.

Primary schools capacity in the Burnham-on-Crouch and Southminster area

Sites at Burnham-on-Crouch and Southminster are within the same primary school pupil forecast planning group of “Maldon Group 3 (Burnham/ Southminster)”. (The Maldon Group 3 pupil forecast planning group comprises Burnham-on-Crouch Primary School, St Mary’s Church of England Voluntary Aided Primary School and Southminster Church of England Primary School.)

ECC states, in the Joint Primary Education Capacity Statement submitted after the examination calculating that, operating at 100% capacity, there is primary school capacity to accommodate approximately 67 additional family dwellings beyond the 450 dwellings that is being allocated in the LDP for Burnham-on-Crouch. In addition,

it was estimated that there is capacity for approximately 267 additional dwellings at Southminster. While the three primary schools in Burnham and Southminster (Burnham-on-Crouch Primary School, St Mary's Church of England Voluntary Aided Primary School and Southminster Church of England Primary School) belong to the same 'pupil forecast planning group', nevertheless, the two settlements are not within walking distance from each other and pupil capacities between schools are not easily transferable.

While there may be some flexibility in calculating maximum school capacity and future pupil numbers, nevertheless, local evidence indicates that school capacities are stretched with planned LDP growth. This is particularly relevant in the Maldon and Heybridge area given that LDP housing allocations is likely to take-up all additional capacity of the Plume Academy even after the planned expansion and in view of the large amount of non-LDP housing schemes being proposed in the area.

The Council, together with ECC and local schools, must assess proposals on a site-by-site basis to decide whether a proposal will have significant detrimental impact, individually and cumulatively, on future school capacity which could undermine the LDP growth strategies.

8. Garden Suburb Masterplans, Strategic Allocations and future infrastructure pooling

Policy S2 of the LDP relates to Strategic Growth in the District and sets out details of the residential supply to meet minimum requirements between 2014 and 2029. Policies S3, S4 and S6 set out important development principles and requirements for the development of the Garden Suburbs and Strategic Allocations, including key infrastructure requirements.

The South Maldon Garden Suburb Strategic Masterplan Framework was endorsed by the Council as a material consideration for the determination of relevant planning applications on 11 September 2014. The North Heybridge Strategic Masterplan Framework was endorsed by the Council as a material consideration for the determination of relevant planning applications on 30 October 2014. Planning applications have subsequently been submitted for development of the Garden Suburbs and two sites have since been granted permission.

Policy I1 of the LDP sets out how the Council will seek to ensure the provision of required infrastructure, services and community facilities alongside new development. The Infrastructure Delivery Plan and the Infrastructure Phasing Plan identify strategic infrastructure projects which are directly related to individual sites and which are essential to make the development sites acceptable in planning terms and to deliver the proposals in the Plan. Key infrastructure requirements will be funded through pooled planning obligations and the pooling arrangements are set out in Policy I1. These documents are therefore material considerations in the determination of planning applications and must be closely adhered to.

Since 6 April 2015, the requirements of Regulation 123(3) of the Community Infrastructure Levy Regulations 2010 came into effect. This limits the funding or provision for any one specific infrastructure project or type of infrastructure to a maximum of five separate planning obligations.

In relation to the limits of Regulation 123, the Council can confirm that it has no concerns regarding the numerical limits of generic contributions and it has not

received more than 5 generic contributions for any type of infrastructure in the District. Of the six sites identified where planning permission has been granted and contributions are due, work has commenced in respect of three sites and contributions have been received in respect of two of these to date. None of the income received for healthcare, highways works and pedestrian linkages has been spent, nor are there any implications in respect of pooling restrictions when contributions are received for education and open space purposes.

A model Section 106 agreement is now in use to ensure that the Council's requirements can be captured. The model S.106 agreement will be available on the Council's website and is being presented to applicants where S.106 agreements are required.

9. Reserve Sites

LDP Policy S2 identified three reserve sites as a contingency measure in case the housing allocations fail to deliver. During the LDP examination hearings the Inspector stated that inclusion of these reserve sites was 'misleading, unclear, not justified and not sound' and that the Council should not list specific reserve sites in the policy. In the light of the Inspector's concerns, the Council has proposed modifications to the LDP to remove all references to reserve sites.

10. Retail Development

Studies for retail and employment have recently been published by the Council and now form part of the LDP evidence base.

The retail study projects requirements up to 2029, split into comparison and convenience floorspace. There is currently 5,842sqm of committed convenience and comparison retail floorspace outstanding in Maldon, including 2 foodstores in edge-of-centre locations. The study concludes that any further retail floorspace in the Maldon and Heybridge area should come forward towards the middle to end of the Local Development Plan period once the Aquila proposals in Fullbridge have been built out and have been open for trade for a reasonable period of time. In the longer term, the report suggests that any residual convenience retail capacity available by 2029 should be directed towards Burnham-on-Crouch. It should be noted that the report also recommends that the retail impact threshold should be lowered to 1,500 sqm in Maldon and 1,000 sqm in Burnham.

The report identifies capacity for an additional 3,400 sqm to 4,800 sqm net of convenience floorspace to meet the expenditure growth of the District by 2029 and it estimates that there will be 1,900 to 2,700 sqm capacity at 2019. It should, however, be noted that this capacity does not make allowance for planned retail space at the local centres in the proposed Garden Suburbs or the recently approved Lidl supermarket in the Causeway. For guidance, a 'local' format of a supermarket is typically in the region of 150sqm net. The study concludes there is no existing requirement for additional comparison floorspace at present and only marginal potential capacity of 2,800 to 5,000 sqm net by 2029.

With the approval of Lidl in the Causeway which comprises 1,391 sqm of net additional sales area, there is a residual capacity of between 509 and 1,309 sqm convenience floorspace in the period up to 2019, and capacity of comparison floorspace remains at zero. Proposed retail developments in excess of 509 sqm could therefore undermine the vitality and viability of Maldon town centre.

11. Rural Housing, Employment Allocations, and District-wide Travellers provision Development Plan Documents

The Development Plan Documents (DPD) will identify the rural housing and employment sites and gypsy and traveller pitches which are required to deliver the objectively assessed need identified in the LDP and supporting evidence base. The Council has also commissioned an independent review on the latest Gypsy and Traveller Accommodation Assessment (ORS 2014) with regards to the District's future need for Gypsy and Travellers provision. Following this review, the Council has agreed to progress with a Travellers need for between 23 and 32 pitches up to 2033.

The Council is currently undertaking a call for sites exercise to identify sites for rural housing, employment and traveller pitches. The Council will published a background paper and methodology for site allocations in the DPD in due course..