Dear Mr Coleman,

**Maldon District Local Development Plan – Interim Findings**

1. Thank you for your letters of 12 and 21 May 2015 about my Interim Findings of 8 May 2015. As promised, I have carefully considered the contents of your two letters and your three suggested options to provide the “clear and pragmatic way forward for the Examination.”

2. So far as the last two of the suggested three options are concerned, these are not for me to comment on, or to deal with, because they involve taking the responsibility for the Examination out of my hands – either by asking the Secretary of State to direct that the Plan is submitted to him for his approval under section 21 of the 2004 Act, or by a Judicial Review where the Court would be asked to quash my Interim Findings and remit the Plan back for re-examination by a new Inspector. As a matter of courtesy, please would you let me, and the Planning Inspectorate, have copies of the documents that your Council submits and receives as it pursues these two options?

3. You have asked me to respond to the first option that you set out in your 21 May letter, which I understand to be progressing and completing the Examination by:

   - My sending to your Council my “interim findings on all policies subject to the Examination-in-Public hearing sessions in January and February this year” which covered all the housing and legal compliance issues; and then

   - “Following receipt of the full interim findings and the finalisation and publication of the retail and employment studies … to progress with the Examination-in-Public and further hearing sessions as planned”, which were scheduled to start on Tuesday 23 June 2015 for two weeks; and then

   - After the Council’s appointed consultant has confirmed the identified need for Traveller pitches in the District for inclusion within Policy H6 sometime later this month (June 2015) for me to hold "an additional hearing on the provision for Travellers and policy H6 [which] could be scheduled to take place alongside, or immediately following the completion of the hearings into the other policies of the Plan this summer.”
4. Before I respond, I want to make it clear that I am not unsympathetic to the Council’s present predicament. You will recall that I have consistently stated that my aim in conducting this Examination is to be pragmatic, positive and proactive. I am acutely aware of the need for all councils to have adopted local plans so that development is genuinely plan-led in order to achieve the necessary economic, environmental and social outcomes for their local residents and businesses.

5. You will be aware of the efforts that I have made over the last year to keep this Examination on track and heading towards a positive outcome, not least of which were the Exploratory Meeting in July last year (which set out my key soundness concerns about the Plan); then my giving the Council time to repair the problems in its evidence base by suspending the Examination; and then my suggestion, due to the lack of a 5-year housing land supply in the District, to hold the hearings in two stages with the housing policies first which could then deal with many of the housing soundness concerns that I raised at the Exploratory Meeting.

6. Given this, and my appreciation of Council’s present planning difficulties, particularly with housing land supply, and of the amount of time, cost and effort that all involved have put into the Plan to date, I wish to assure you that I would not have submitted my negative Interim Findings if I had believed that there was another alternative open to me. The unique circumstances surrounding the submission and evolution of policy H6 throughout the Examination, my duty to implement the Government’s planning policies and to take account of section 149 of the Equality Act 2010, and the need for fairness to all Examination participants have led inexorably to my Interim Findings.

7. I think it would be helpful if I set out the key failings of policy H6 as submitted and then how it, and its evidence base, has been dealt with during the Examination.

**Policy H6 “Provision for Travellers”**

8. As submitted by the Council for examination in April 2014, policy H6:

- Lists only existing traveller sites already granted planning permission;
- Does not allocate any new pitches to meet unmet past or present traveller accommodation needs, or to meet future traveller needs;
- Sets a future pitch requirement to 2027 based on an out-of-date 2009 accommodation study (EB007) and an extrapolated trend-based 2013 update (EB073) derived from that out-of-date study;
- Sets out criteria-based policies for assessing future planning applications and allocations which do not comply with national policy; and
- Defers the allocation and requirement for future Traveller pitches to an “appropriate time in the future when new evidence becomes available” (paragraph 5.48 of the Plan).

9. During the Examination policy H6 and its evidence base evolved as follows:

- The Exploratory Meeting in July 2014 set out my key concerns that the policy had an outdated evidence base for future traveller pitches and that it lacked any allocations for them;
- The Council submitted its 2014 Gypsy and Travellers Accommodation Needs Assessment (GTAA) [EB007a] in August 2014. As you said in your letter of 12 May, the 2014 GTAA “identified a far higher pitch requirement for the District than had first been anticipated within the Plan”;

- 2 -
• The Council suggested changes to policy H6 in August 2014 to delete its future pitch requirement and to clarify that a focused review of policy H6 would be undertaken in 2016 to “identify an appropriate provision for Travellers”;
• In October 2014 the Council said that whilst the 2014 GTAA represented “the latest and most robust evidence” on future pitch requirements it would “need to consider and take into account local circumstances and evidence”;  
• In its January 2015 hearing statement the Council said that it “accepted that there is likely to be a higher gypsy need in the District than previously identified, hence a need to allocate new gypsy sites” (paragraph 9.3) and that the 2014 GTAA “suggests a significantly higher need for new traveller and gypsy sites in the future” (paragraph 9.5);
• At the 3 February 2015 hearing the Council said that it had objections to the 2014 GTAA, and that the Plan’s suggested review of policy H6 was not included in its January 2014 Local Development Scheme (LDS) [SD09];
• At the February 2015 hearing local people expressed concerns that the Council had not addressed traveller site allocations in a responsible manner over a considerable period of time, and that this had resulted in sites being granted planning permission on appeal;
• Later in February 2015 the Council set out suggested changes to policy H6 which included altering the policy criteria for assessing new sites to accord with national policy;
• The Council added the Traveller DPD (Local Plan) to its LDS in March 2015;
• The Council set out its objections to the 2014 GTAA in March 2015, stating that whilst it “represents the latest available information in relation to Travellers’ provision”, the Council’s concerns had not been satisfactorily resolved; and
• In March 2015 the Council and others set out their views on the implications for policy H6 of the Equality Act 2010 as dealt with in Moore & Anor v Secretary of State for Communities and Local Government & Ors [2015] EWHC 44 (Admin) of 21 January 2015.

10. Before I deal with your “first option” request to me to complete the Examination, you also made a number of points in your letters which I reply to below:

**Inspectorate advisory visits in 2013**

11. My colleague, Mr Holland, made two advisory visits to your Council in April 2013 (Appendix 4 to DOC77 and also attached to CED06) and in November 2013 (attached to CED06). Mr Holland is not the examining Inspector, and he carefully prefaced his advice as reported in the April 2013 notes of his visit:

“Mr Holland made it clear that while he is providing his opinions as an experienced planning inspector; his views and comments are not binding and should not be interpreted as the definitive view from the Planning Inspectorate.”

12. The sections of his advice that you have quoted in both your letters should be taken bearing that important qualification in mind.

13. His advice on travellers (given at his second, November 2013, visit) was in the context of a suggested policy which met future traveller provision through a criteria-based approach and not through allocations. He queried whether there was “capacity within the constraints of the policy” to meet a 5-year supply for pitches through the “intensification of existing sites” and cautioned that this “can be very difficult”. He said that declaring a plan unsound on the basis of traveller provision was unlikely only “where it was not a major issue for the District.”
14. As the Inspector appointed to independently examine the Plan on behalf of the Secretary of State, I identified traveller policy H6 as a “significant concern” affecting the Plan’s potential soundness in my 25 June 2014 letter (IED06) prior to the Exploratory Meeting on 3 July 2014. I did this having had the benefit of far more time than Mr Holland had had to examine and consider the policy and its evidence base. I concluded in my 25 June 2014 letter that:

“The lack of an Assessment and an allocations policy to cover the plan period is contrary to Government policy in paragraphs 8 and 9 of its Planning Policy for Traveller Sites. I am not yet convinced that the issue can be left to a later plan review as paragraph 5.48 of the Plan proposes.”

15. I had, therefore, as early as June 2014 (following the Plan’s April 2014 submission) clearly identified policy H6 as being a major soundness issue for the Plan.

16. I should add that at the same Exploratory Meeting many more soundness concerns were identified on matters such as the methodology of the Plan’s full objective assessment of housing need; the amount and rate of housing delivery; whether infrastructure could be delivered on time; the viability of the allocated housing sites; whether sufficient detail was given about the housing allocations and associated development management policies; and uncleanness about the proposals for employment based on an out-of-date evidence base, with similar concerns for the retail proposals.

17. The Council can have been in no doubt in July 2014 that its Plan had serious problems and that a satisfactory soundness outcome was by no means guaranteed.

**Why was the Examination not stopped sooner?**

18. At the Exploratory Meeting in July 2014 the Council urged me to carry on with the Examination and said that this was its “strong desire”, and that I should suspend the Examination to give it time to produce the further work necessary (see CED06). I agreed, but in my letter of 7 July 2014 (IED09) setting out the result of the Exploratory Meeting I warned the Council:

“There is a risk that the new evidence will raise a number of issues about the basis of the Plan’s preparation which could lead to major changes and a substantially revised Plan compared to that submitted. If this occurs, then that would suggest the Plan was not sound at submission and that it should be withdrawn. However, the Council is currently confident that this risk is minimal. I consider that it should be given the opportunity to prove its case given the shortness of the requested suspension [3 months] and the urgent need to provide housing land and sound development policies for the District.”

19. Whilst the Plan was suspended I was, as I informed the Council in the above letter, committed to other local plan examination work during the autumn of 2014.

20. The Council submitted the 2014 GTAA in August 2014. Despite the Council’s unspecified concerns about it expressed in August (CED10) and October 2014, I anticipated that I could use its results to recommend main modifications which might make the policy sound. I was still concerned about the Plan’s proposal to leave traveller allocations to a later plan review, and I continued to query whether such sites should, in fact, be allocated in this Plan. This can be seen in Matter 9 of my ‘Matters, Issues and Questions’ of 1 December 2014 and my hearing agenda, which also asked if the 2014 GTAA established current and future need requirements and which requested views on possible options that might be open to me.
21. It was only in reading the Council’s January 2015 hearing statement response to my ‘Matters’ and, more importantly, when I listened to and considered its evidence at the hearing in February 2015, and also the evidence submitted afterwards, that it became clear to me that the Council disputed the 2014 GTAA results to the extent that there was no reliable or robust evidence base for traveller accommodation needs at all. Thus, no main modifications could be recommended by me to policy H6.

22. The reasoning set out in the Moore court case, which I and the Examination’s participants considered after the hearing, has added to my concern that the lack of accommodation needs evidence resulted in a fundamental failure of policy H6.

23. I have thus stopped the Examination at the earliest possible time, before the second set of hearings, and only once it had become clear that policy H6, and thus the Plan, was not sound and that I could not rectify this unsoundness through modifications or suspension. To have halted the Examination before hearing and questioning the evidence would have been unfair and premature. I would have been pre-judging matters and denying an opportunity for a fair hearing to the Council and representors as I would have had no basis to come to any conclusions on policy H6.

24. The Inspectorate’s Procedural Practice for Examining Local Plans states at paragraph 2.9, in relation to the early stages of an examination, that “Inspectors are unlikely to reach any conclusive findings of unsoundness at this stage.” It goes on to say that “It would be difficult for an Inspector to reach a conclusive finding prior to holding the hearing sessions where the evidence can be properly tested.” I consider that I have acted entirely in accordance with the Procedural Practice in this respect, and that there was, and is, no procedural unfairness.

25. The Council has had ample warnings of my concerns and the possible consequences. It has consistently urged and encouraged me, as I think was right and proper in the circumstances, to continue with the Examination, to allow it to present additional evidence, and for me to hear all the evidence from it and local people before coming to any conclusions.

Lack of objections

26. Your letter of 12 May says that “It must be noted that no members of the travelling community have objected to policy H6 of the Plan.” That may be so, but the planning merits and the soundness of a policy are not solely dependent on the number of people who may, or may not, have objected to it.

27. The same letter says that “at the Examination hearing session, those residents opposing policy H6 of the Plan still expressed preference for adoption of a local plan against having no policy at all.” However, you will have seen the email from Mrs Hopkins of 13 May 2015 disputing this assertion, and saying that at the hearing she, her husband, and Mr Mussett, representing Little Braxted Parish Council, all “argued that the plan should fail if H6 was deemed unsound.”

28. I have played back the audio recording that the Council made of the hearing, and it confirms that Mr Mussett and Mrs Hopkins did say this (in terms), although I did not hear Mr Hopkins’ agreement to that course of action. Mrs Hopkins is recorded as saying, “I can see that holding up the whole plan would not be ideal, but I have no faith that they [the Council] would deliver.”
Travellers are not a significant issue in the District

29. In your letter of 21 May you say that “It was not considered proportionate for the Council to produce detailed and expensive local evidence of traveller needs in the District when in relative terms traveller provision is not a particularly significant issue in the District.” This is not a justified reason for failing to provide for the needs of travellers in the Plan in accordance with national planning policy, also taking into account that they are a legally protected, minority racial group.

30. The whole point of national planning policy in the Government’s Planning Policy for Traveller Sites is to ensure fair and equal treatment for travellers in the provision of sites (paragraph 3), based on robust evidence. The Council accepts there is a traveller accommodation need which requires site allocations, but policy H6 does nothing about them. If, as is claimed, travellers are not a significant issue in the District, then it begs the question as to why the Council did not properly deal with it during the Plan’s preparation.

31. The 2014 GTAA is dated July 2014, and the Council has had more than sufficient time since then to resolve its concerns and objections to it, knowing, as it did, that the lack of such evidence for traveller needs was a significant soundness issue for the Plan. Only now, in May 2015 after receipt of my Interim Findings, has it belatedly instructed consultants to carry out this work.

Existing criteria-based policies could cope in the short term

32. In your letter of 21 May you say that the Council “believes that scope exists to expand and or intensify some of the existing sites in appropriate circumstances”, and that “the criteria based policy approach set out within policy H6 would in fact enable further pitches to be brought forward in the District through planning applications and the Development Management process, allowing for short term needs to be met.” I have seen no evidence that this is possible or likely. Mr Holland warned that the Council would need to consider whether there was, in fact, capacity to intensify accommodation supply on existing sites. But at the policy H6 hearing in February 2015 when Mr Mussett asked for existing sites which could be expanded to be identified in policy H6, the Council said that there was no evidence available to do this.

It is a disproportionate approach and not in the public interest

33. I have given a great deal of consideration to the matters of proportionality and the public interest in the course of the Examination and I cannot agree with the Council. My reasons are fully set out in my Interim Findings and there is nothing further to add to them.

Subjective justifications

34. You say that “many of the justifications you have used are subjective.” My view is that these are planning judgements based on national planning policy and the law. The soundness of the Plan is a matter which I am expressly required to assess. I do not believe that these judgements are irrational or unreasonable, or that I have ignored the relevant national policies, the law, or other material considerations.
CIL Charging Schedule Examination

35. The situation on your Council’s CIL examination remains as set out in the letter sent by the Planning Inspectorate on 31 October 2014. It is the Inspectorate’s usual practice when a Local Plan and CIL are submitted simultaneously for the Local Plan examination to be held first and the CIL examination to follow at a later date. It is not possible or practical for the necessary viability testing of your Council’s evidence supporting the proposed CIL rates to be carried out until such time as I am satisfied that your Plan can be taken forward and put in place, which presently appears unlikely. This is because I must consider whether the rates put forward would put at risk the delivery of the scale and general locations of development proposed in the Plan, bearing in mind the necessary associated infrastructure.

36. I now turn to the first option that you asked me to consider in your letter of 21 May.

First Option – to continue with the Examination

37. The reasons why I cannot continue with or suspend the Examination or set out my findings on the housing and legal compliance hearings held in January and February 2015 are set out in my Interim Findings, and so there is no need for me to repeat them again.

38. I add the following reasons:

- Section 20 of the 2004 Act requires me to carry out the Examination to assess whether the Plan is sound, to make a recommendation of adoption or non-adoption or modification, and to give reasons for that recommendation(s). I am satisfied that I have carried out the Examination to the point where I am able to make a recommendation of non-adoption. My Interim Findings give the likely reasons for that recommendation. The legal purpose of an examination is not, as you suggest in your letters, to give any further reasons or explanations about any other aspects of the Plan.

- Moreover, what I have done is to state my reasons in sufficient detail to enable the informed reader to know what conclusion I have reached on the “principal important controversial issue” which I have identified after the hearings and later evidence. And that issue is: whether the Plan is sound with regard to policy H6 and, if not, can that unsoundness be remedied? I do not have to refer to every material consideration or deal with every argument raised at the hearings which are unrelated or peripheral to that principal controversial issue. That would impose an unjustifiable burden on my examination of the Plan when I have identified policy H6 as a potential “showstopper” to the Plan’s soundness.

- My Interim Findings are that all the Plan’s housing policies, taken together, are fundamentally unsound because the Plan does not identify and meet objectively assessed housing needs and it is not based on adequate, up-to-date and relevant evidence as required in national policy. This means that the Plan’s housing policies should be reconsidered as a whole and further progressed as one integrated series of policies with associated infrastructure.

- The Council decided on 10 July 2014 to actively invite planning applications within the areas of the strategic allocations identified in the Plan’s policy S2 (CED10 Appendices 8a, 8b and 8c). Thus, some allocated sites already have planning permission (see paragraph 5 of my Interim Findings) and only one site in the Plan does not have an application either pending or about to be submitted. Therefore,
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. I do not, therefore, consider that the effect on the District’s future housing needs of my not continuing with the Examination will be as bad as the Council believes.

- The provisional date for the employment and retail hearings (and the other remaining Plan policies) is just under 3 weeks away (23 June 2015). I, and the other Examination participants, have not yet received the Council’s updated evidence base studies on these subjects. There is, therefore, not enough time to consider the evidence, for me to set out my issues and questions on them, and for participants, including the Council, to respond before the hearings start.

- The future requirements for both employment and retail provision are, as you said in your letter of 21 May, intrinsically linked with the scale of future housing provision in the District. Since it will take time to resolve travellers’ provision then the scale of housing provision could have changed in the meantime and thus have altered the future requirements for employment and retail provision.

- A further traveller hearing on any suggested future pitch number requirement over the plan period would not achieve soundness. This is because the policy would still not allocate travellers’ sites and pitches. I identified this aspect in my Interim Findings as a soundness requirement for the Plan to accord with national policy, particularly given past unmet need and the necessity to co-ordinate such allocations with other housing policies in the Plan, such as the strategic growth areas where policy H6 says some traveller sites should be allocated.

- In addition, although your Council has just commissioned a consultant’s report on this aspect, which is expected sometime later this month, it would still require further lengthy sustainability appraisal work and public consultation. This would be contrary to those parts of the Inspectorate’s Procedural Guidance that I mentioned in my Interim Findings in its paragraphs 61 to 64. During the time this would take other housing need circumstances might well have changed.

39. I am sorry that I have not been able to agree to your Council’s request to continue with the Examination.

40. I remind you that I have asked your Council to confirm which of the options set out in my Interim Findings it wishes to pursue – to withdraw the Plan or to receive my report on it. Please would you provide me with this information as soon as possible if your Council is not pursuing either of the last two options in your 21 May letter.

41. Please place a copy of this letter on the Examination web site.

Yours sincerely,

David Vickery

Inspector