Dear Mr Vickery

Maldon District Council Local Development Plan – Interim Findings – Further Response

Further to my letter dated 12 May 2015 I am writing to further outline the Council’s response to your interim findings and to recommend a clear and pragmatic way forward for the Examination and for the Plan in order to avoid any further delay.

As set out in my previous letter, the Council remains very concerned that your interim findings do not appear to provide any way forward for the Plan other than withdrawal or non-adoption, which we feel represents a disproportionate approach and is not in the public interest. The Council has acted with integrity and in good faith at every stage of the plan preparation process, and has sought advice and guidance from a wide range of organisations and individuals in order to progress the Plan in the most appropriate and timely manner possible.

As you are aware, the adoption of the Local Development Plan for the District is a key corporate priority for the Council. It is also of fundamental importance as it will help to ensure that future development in the District is managed, coordinated and supported by the necessary infrastructure for the benefit of local communities and businesses. The Council has also produced and submitted for Examination a Community Infrastructure Levy (CIL) Charging Schedule to be considered alongside the Local Development Plan. The Council requires both the LDP and CIL to be adopted and implemented at the earliest possible opportunity.

In light of your interim findings, the Council is currently pursuing a number of options in relation to the Examination-in-Public. Firstly, the Council is seeking to identify and agree a way forward with you for the progression and completion of the Examination-in-Public, and I set out further details of the proposed approach below.

Secondly, the Council is making a request to the Secretary of State to call-in the Plan under Section 21 of the Planning and Compulsory Purchase Act 2004. The Council considers that the interim findings represent a disproportionate response in terms of your interpretation of national guidance, and that the Secretary of State should be provided with the opportunity to reconsider your interpretation and conclusions.

Thirdly, legal advice is being sought in relation to a potential judicial review.
Proposed approach to the completion of the Examination-in-Public

In terms of agreeing a way forward for the Examination-in-Public, as stated previously the Council feels that this can be achieved with relatively minimal disruption to the existing timetable. Firstly, it is imperative that the Council receives your interim findings on all policies subject to the Examination-in-Public hearing sessions in January and February of this year. The Council needs to obtain clarity and confirmation on the legal compliance and soundness of relevant policies, in order to provide a clear and consistent basis for the future planning of the District. Otherwise relevant policies may be subject to challenge on a case by case basis, which would inevitably lead to ‘planning by appeal’. This would be very costly and time consuming, and would potentially lead to great uncertainty in both future plan making and decision making. In the meantime, the Council must and should maintain that significant material weight must be provided to relevant policies (with modifications) which have been subject to hearing sessions (with the exception of Policy H6), given that they are at such an advanced stage.

You will be aware that the Council is currently in the process of concluding new retail and employment studies for publication following your ‘key concerns’ raised during June 2014 (IED06) and subsequent correspondence. In order to ensure that these studies will represent value for money and provide up to date and robust evidence to robustly inform plan preparation and decision making in the District, it is essential that the Council receives confirmation that the objectively assessed needs for housing identified in the Plan (310 dwellings per annum) is correct and sound. Clearly the scale of future housing provision in the District is intrinsically linked with the future requirements for both employment and retail provision.

In addition, the Council requires clarification that the other strategic housing and infrastructure policies in the Plan are sound in order to confirm the housing strategy and to provide a clear and consistent basis for establishing the five year housing land supply requirement for the District. Without this confirmation the Council’s planning decisions and LDP requirements may be challenged at appeal. In theory, the Council may be forced to provide a full explanation and justification of what constitutes objectively assessed needs for housing in the District at individual planning appeals.

Following receipt of the full interim findings and the finalisation and publication of the retail and employment studies, it would be possible to progress with the Examination-in-Public and further hearing sessions as planned. In the meantime the Council would be in a position to confirm the identified need for Traveller pitches in the District for inclusion within Policy H6. Your interim findings indicate (in paragraph 52) that where adequate evidence of traveller housing needs exists this has enabled other Planning Inspectors to make recommendations which could set clear targets and pitch numbers required over the plan period to guide the additional Plan for Travellers. The Council has already proceeded to secure a consultant to undertake this work and findings are due to be received in June. Alongside work to inform a clear target for Travellers provision in the District, the Council will also formulate a clear work plan to demonstrate the process by which additional pitches for Travellers will be allocated through the Travellers DPD. The Council believes that this is achievable without the need to further suspend the Examination.

An additional hearing on the provision for Travellers and policy H6 could be scheduled to take place alongside, or immediately following the completion of the hearings into the other policies of the Plan this summer. The Planning Inspectorate Procedural Practice Guide for Examining Local Plans (3rd Edition v.2 December 2013) suggests that if serious concerns were emerging during hearing sessions then the Inspector would be able to arrange an additional hearing session as necessary to review how far the examination has reached and discuss concerns arising. Additional hearing sessions may also be arranged when a matter affecting soundness or legal compliance needs to be investigated further. The Council strongly believes this represent the appropriate approach and should be considered as an additional option as part of your Interim Findings.
The Guide also indicates that the Inspector may consider a partial suspension on one element of the plan, in order to allow the examination to continue into the remaining elements of the Plan, which will cause less disruption to the examination timetable. This approach would necessitate an extra hearing session(s) to be scheduled after the main hearings to consider the further work once completed. As above, a further hearing session for Travellers could be held either at the same time or following the completion of the hearing sessions on the other policies of the Plan.

Interim Findings

Further to my letter of 12th May, I set out below in further detail the Council’s concerns in relation to some of the points raised and reasoning for conclusions reached within your interim findings. This is not intended to be an exhaustive appraisal of the interim findings, but rather highlights some of the Council’s particular areas of concern.

In paragraph 9 your findings state that you do not consider ‘that it would be relevant or helpful to make any comments now on the other housing and legal compliance matters because they would soon be overtaken by events’. This statement appears to contradict the purpose of holding ‘housing’ related hearing sessions for three weeks in January and February 2015. The overriding purpose of your interim findings was to provide confirmation on the legal compliance of the Plan and the soundness of the strategic housing policies of the Plan.

In paragraph 42 you state that the Council ‘has not produced adequate, up-to-date and relevant evidence on traveller provision’. This statement contradicts directly with advice received from Mr Keith Holland on advisory visits to Maldon District Council to support the preparation of the Maldon District LDP. Mr Holland stressed the importance of proportionality in producing evidence base studies in accordance with paragraph 158 of the National Planning Policy Framework. 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. In addition, it would have been unrealistic and disproportionate for the Council to wait for an unknown period of time to conclude the Plan in order to take into account the findings of the emerging countywide Gypsy and Traveller Accommodation Assessment which was released in July 2014 (subsequent to the submission of the Plan for Examination in April 2014). It would clearly be unreasonable to expect the Council to put on hold plan preparation for one emerging study, particularly when the Council was not overseeing the timetable for the production of that study. Under the circumstances Mr Holland advised and encouraged the Council in no uncertain terms to continue to finalise and submit the Plan for Examination at the earliest possible opportunity.

In paragraphs 46-50 you explain why you do not believe that it is in the public interest for the Council to produce an additional Development Plan Document for Traveller provision. The Council is of the view that many of the justifications you have used are subjective. You also fail to make any reference to the fact that in setting policy H6 of the LDP the Council has gone to great lengths for the first time to formally identify and designate all existing pitches for Travellers in the District. In doing so the Council has recognised and safeguarded these sites from future change of use whilst also significantly increasing the supply of pitches by formally identifying and making lawful a number of pitches and sites in the District which were previously considered to be unlawful or unauthorised. As a result the Council has formally identified and designated 58 pitches across the District, and believes that scope exists to expand and or intensify some of the existing sites in appropriate circumstances. In addition, the Council believes 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. This would be in line with many other Local Plans adopted post publication of the National Planning Policy Framework in 2012. Paragraph 153 of the National Planning Policy Framework provides for flexibility in Plan production where warranted, and this does not seem to have been fully factored into the interim findings.
The Council is concerned that you have indicated (in paragraph 48) that the exclusion of traveller housing need evidence and provision in a Local Plan could set a precedent for other Local Planning Authorities to avoid producing or submitting robust evidence or avoid making difficult decisions on the allocation of any required traveller sites or pitches. The Council produced a policy to meet the needs of travellers based upon a realistic and proportionate approach given the evidence available at the time. New evidence emerged once the Examination of the Plan had commenced which requires the Council to relook at the issue. Concern in relation to setting a precedent should not outweigh the importance and clear public interest of moving forward a Plan which seeks to plan for the District over the next 15 years and stop the likelihood of speculative or undesirable development which will impact negatively on all sections of the local community (including travellers).

In paragraphs 50 and 51 your findings state that you are ‘not convinced that the Council will actually deliver an additional Traveller LP on time or possibly even at all’. You go on to say that ‘I am aware that my colleagues in some other examinations have taken a different course of action and have agreed to a later additional Traveller LP. But in the cases that I am aware of my colleagues have had adequate evidence of traveller housing needs which enabled them to make recommendations which could set clear targets and pitch numbers required….That is not the case here…Moreover, I have reservations that the Council is fully committed to the production of an additional Local Plan for travellers’ needs’. This justification is highly questionable, given that the Council has formally agreed and committed to the production of a separate Development Plan Document to make provision for Travellers by 2017 (alongside the production of a ‘Rural Allocations’ plan) in its Local Development Scheme. In fact the Council takes offence at these damaging judgements. There is no clear evidence for your assertion that the Council would not proceed to produce a DPD for Travellers as set out in the Council’s agreed Local Development Scheme. As suggested above, the Council could relatively easily and quickly set and agree to a future target for the pitch numbers required within the LDP if this is what is required. This certainly does not require the withdrawal of the Plan.

In paragraph 63 you have concluded that the Examination should not be suspended to allow the Council to undertake further work on Policy H6, because any further suspension may result in evidence base studies ageing and becoming out of date ‘and thus it is possible that these would need to be updated and the relevant policies modified. The Examination has already been provided with a large number of updates to evidence….It is already difficult for participants to understand the new evidence…Any more would be very confusing.’ This reiterates why it is so important for the plan to move forwards rather than backwards. The lack of confirmation that the housing strategy in the Plan is sound will inevitably now result in evidence becoming outdated. It does not seem fair or justified that the Council should be penalised for attempting to meet the requirements of national planning policy by continually responding to changing circumstances to produce new evidence required to support the LDP, which has inevitably resulted in a great number of additional updates to studies over time.

In paragraph 90 you conclude that ‘if the Plan’s housing policies were to be adopted (with modifications) then there would be a serious adverse outcome in equality terms for the protected Romany Gypsies and Irish travellers racial groups.’ This justification appears to be flawed given that all sections of society, including Travellers, will be adversely impacted by the lack of an up to date plan in the District. In addition, if the Plan is withdrawn, there is likely to be a further delay in allocating traveller sites whilst the Council is forced to re-examine all policies in the Plan yet again, and consider updates to evidence base studies where these may be required.

To date, the Council has incurred costs of in excess of £145,000 on the Examination process alone (excluding staffing costs) and approximately one million pounds on the production of the LDP since 2011. To withdraw the Plan at this late stage would delay progress considerably, and result in even greater costs to the Council and the local community in the future. Any further delay to the adoption of the Plan is likely
to result in further changes to the evidence base, or even existing expensive studies becoming outdated, resulting in even more knock-on work and expense for the Council.

The Council is in receipt of planning applications for the vast majority of allocated sites for residential development in the Plan. The interim findings, together with the lack of any progress in undertaking the CIL Examination, leaves the Council’s carefully considered housing and infrastructure plans in the balance. At the same time, the District continues to be bombarded by speculative development proposals from developers for sites which are not allocated for development within the LDP, and therefore have not been considered to be ‘sustainable’ or ‘appropriate’ locations for growth by the Council. This leaves the District subject to the risk of ‘planning by appeal’ which is likely to be highly detrimental to the future character of the District.

I trust that this additional letter is helpful in further clarifying the position of the Council and in establishing a way forward for the Examination. I look forward to receiving your response in relation to the proposed approach to taking forward the Examination-in-Public of the Maldon District Local Development Plan. I would also ask for confirmation of the position in relation to the Examination of the Maldon District CIL Charging Schedule.

Yours sincerely

David Coleman
Group Manager Strategic Planning