



RESPONSE FROM THE LEADER OF THE COUNCIL

to
COUNCIL
31 MARCH 2022

PUBLIC QUESTIONS

1. QUESTIONS OF WHICH NOTICE HAS BEEN GIVEN

- 1.1 In accordance with the Council's public speaking protocol the following question was received from a member of the public.

2. QUESTIONS

- 2.1 The following question was received from Mr Tom Kelly on 10 March 2022.
- 2.1.1 Can legal advice be sought via qualified planners to investigate if necessary community facilities such as health facilities, included in planning applications, must be prioritised and give the same importance as energy, water, sewage or telephone connections, and legally in place prior to the commencement of house building by developers?

3. RESPONSE FROM THE LEADER OF THE COUNCIL

- 3.1 The Council's professionally qualified legal and planning officers have been asked for their advice in relation to Mr Kelly's question.
- 3.2 It is important for everyone to understand that the system that the Council is forced to work with is far from perfect and it is appreciated that public expectations of what should be charged for, or prioritised, in terms of the sequencing of a development are not generally the same as what the Council can achieve whilst applying planning law.
- 3.3 Planning Obligations, as they are legally called, which include developer contributions from things commonly called Section 106 (S106) agreements or Section 278 Highway agreements are legal undertakings between the Council, and/or the County Council and a developer and/or landowner that are entered into, to mitigate the impacts a specific development proposal could otherwise have on the local area. They have the effect of making a development, that is otherwise unacceptable in planning terms, to be *acceptable* and therefore enable the granting of planning permission.
- 3.4 The Council does not have however the legal freedoms to merely charge what it wants to, or even to stipulate prescriptively when such facilities should be put in place. Instead, if the local area is to receive any money from development, the Council must follow strict legal tests set out in the Community Infrastructure Levy Regulations 2010 (as amended) and policy tests set out in the National Planning Policy Framework or NPPF. These are:

- They must be necessary to make the development acceptable in planning terms;
- They must directly relate to the development; and
- They must fairly and reasonably relate in scale and kind to the development.

- 3.5 In applying these tests when drawing up the legal agreements, the Council has to accept that it cannot seek money from development to address deficiencies in the existing provision, nor seek all the money upfront so that works by the infrastructure providers can take place before the development starts. The funding from a developer tends to be a contribution towards the cost of delivery, rather than the full costs and so service providers have to bring in other funding or bid for monies to deliver upgrade works. What the Council must do instead, on the recommendation of those asking for funding, is insert trigger clauses into the Section 106 agreements that makes the developer pay once a certain number of homes are occupied (that is to say, when the development's occupants are starting to draw-on local services and have an impact) and in respects of the bigger developments, like our Garden Suburbs, this may well be spilt over several years until they are all built-out and occupied.
- 3.6 It is due to this complexity and importance that Maldon District Council monitor housing developments frequently with site visits, whilst cross-checking information with Building Control and Council Tax to ensure developers pay what they owe in accordance with the triggers in the legal agreements. We are also prepared to take formal action when the developers fail to pay, which I am pleased to report, does not happen very often.
- 3.7 As many people will be aware, work on the Local Development Plan (LDP) Review is now underway. It will, in the context of more housing growth in the District, be revisiting what infrastructure is required in addition to that already planned for in the current Local Development Plan, so that development that takes place in the District contributes *fairly and reasonably* (as required by the legal test), towards the burden that it creates locally. We will be considering as part of the Review, whether there are any other ways we can bring forward infrastructure through development that does not rely solely on S106 agreements by working with infrastructure delivery partners.
- 3.8 To conclude, under current legislation, the Council does not have the powers to force developers or service providers to have the community infrastructure upgrades in place before a development is built. Maldon Members and Officers will however continue to work tirelessly to ensure that the infrastructure associated with the current LDP comes forward once the triggers are reached, within the terms I have outlined.