

Epping Forest District Council

Planning Policy Briefing Note (March 2018)

1. Introduction

- 1.1. This briefing note has been produced by the Planning Policy team to ensure that a consistent approach is taken to the provision of planning policy advice for the District, particularly in relation to the Epping Forest District Local Plan Submission Version ("LPSV"), which was published on 18 December 2017. The primary purpose of this note is to inform the development management process and to assist Development Management officers, Councillors, applicants, and planning agents. Other Council officers involved in the development management process may also find the note helpful (e.g., Housing, Contaminated Land, Landscaping etc).

2. National Planning Policy Framework, the Presumption in Favour of Sustainable Development and the Five Year Housing Land Supply

- 2.1. By section 70(2) of the Town and Country Planning Act 1990 (TCPA 1990), when dealing with an application for planning permission, the Council must have regard to the provisions of the adopted development plan, so far as material to the application; and any other material considerations. By section 38(6) of the Planning and Compulsory Purchase Act (PCPA 2004) the Council must determine planning application in accordance with the adopted Development Plan for the District, unless material considerations indicate otherwise.
- 2.2. The National Planning Policy Framework (NPPF) is a material consideration in planning decisions (paragraph 196) and states that, 'in assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development' (paragraph 197).
- 2.3. 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, 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- where the development plan is absent, silent or relevant policies are out of date, permission should be granted unless: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 [e.g., those policies relating to sites designated as Sites of Special Scientific Interest; land designated as Green Belt, or Local Green Space; or designated heritage assets] indicate that development should be restricted."

- 2.4. The Council's Housing Implementation Strategy, published in December 2017 (<http://www.efdclocalplan.org/wp-content/uploads/2017/12/Housing-Implementation-Strategy-Epping-Forest-District-Council-December-2017-EB410.pdf>) explains that, in accordance with paragraph 47 of the NPPF, the Council has identified a supply of specific deliverable sites sufficient to provide five years' worth of housing against the housing requirements in the LPSV.

3. The Epping Forest District Local Plan (1998) and Alterations (2006)

- 3.1. At present, the statutory development plan for the District is comprised of:
- The saved policies in the adopted Local Plan (adopted 1998) and Alterations (adopted 2006), available at <http://www.efdclocalplan.org/planning-policy/existing-local-plan/> (please note that Policies GB14A, H1A and ST3 have now been deleted).
 - The Essex and Southend-on-Sea Waste Plan (adopted 2017) available at <https://www.essex.gov.uk/Environment%20Planning/Planning/Minerals-Waste-Planning-Team/Planning-Policy/Pages/Replacement-Waste-Local-Plan.aspx>
 - The Essex Minerals Local Plan (adopted 2014), available at <https://www.essex.gov.uk/Environment%20Planning/Planning/Minerals-Waste-Planning-Team/Planning-Policy/minerals-development-document/Pages/Default.aspx>
- 3.2. In accordance with paragraph 215 of the NPPF, "due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)" to saved policies in the adopted Local Plan (1998) and Alterations (2006).
- 3.3. The Council undertook an assessment of the consistency of adopted Local Plan policies against the policies within the NPPF (as published in 2012). This outcome of that assessment was reported to the Local Plan Cabinet Committee in March 2013. Further details can be found at:

<http://rds.eppingforestdc.gov.uk/ieListDocuments.aspx?CId=688&MId=7142>

4. The Epping Forest District Local Plan Submission Version (2017)

- 4.1. On 14 December 2017, at an Extraordinary Full Council meeting, Members approved the LPSV for publication under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) ("the 2012 Regulations") and for submission to the Secretary of State for independent examination under section 20 of the PCPA 2004.
- 4.2. The LPSV comprises a series of up-to-date strategic and development management policies for the District, together with site allocations. It sets out the strategy for

meeting the District's objectively assessed needs for housing, employment and infrastructure from 2011 up to 2033. The LPSV is based on up-to-date evidence and the results of the previous Local Plan consultations undertaken in 2010/11, 2012, and 2016. Once adopted, the Plan will form part of the statutory development plan for the District and will replace the saved policies of the adopted Local Plan (1998) and Alterations (2006).

- 4.3. In accordance with Members' decision, the LPSV was published for a six-week period between 18 December 2017 and 29 January 2018 to allow any person to make representations to the Council about the LPSV under Regulation 20 the 2012 Regulations ("Regulation 20 representations"). As Regulation 19 requires the Council to publish the version of the Local Plan it intends to submit to the Secretary of State for independent examination, the six-week representation period is not a public consultation exercise in the sense that representations are invited on the final form of the LPSV before it is submitted to the Secretary of State for independent examination.
- 4.4. The primary purpose of the Regulation 19 publication period is to allow interested persons to make Regulation 20 representations about the soundness, legal compliance of the LPSV, and whether the Council has complied with the duty to co-operate under section 33A of the PCPA 2004 in its preparation. This reflects the purpose of the independent examination which is to determine, in respect of the LPSV, whether it satisfied the requirements of legal compliance; whether it is sound; and whether the Council has complied with the Duty to Co-operate under section 33A of the of the PCPA 2004, in its preparation.
- 4.5. Copies of all duly made Regulation 20 representations will be sent to the Secretary of State when the LPSV is submitted for independent examination under section 20 of the PCPA 2004. Under section 20(6) of the 2004 Act, any person who makes representations seeking to change the LPSV must (if s/he so requests) be given the opportunity to appear before and be heard by the person carrying out the examination. Regulation 23 of 2012 Regulations, the Local Plan Inspector appointed to the examine the LPSV must consider all duly made Regulation 20 Representations before making a recommendation concerning the adoption of the LPSV.
- 4.6. At the Extraordinary meeting on 14 December 2017, the Council also resolved to approve the Plan as a material consideration in decision-making. This means that the LPSV, as supported and justified by the Local Plan evidence base, should be taken into account as material planning considerations when determining future planning applications and giving advice at the pre-application stage. The documents comprising the Local Plan evidence base can be found at: <http://www.efdclocalplan.org/technical-information/>.
- 4.7. It is very important to note that, until it is adopted by the Council under section 23 of the PCPA 2004, the LPSV does not form part of the statutory development plan for the District. However, as it will not be altered materially before submission to the Secretary of State before 31 March 2018, the LPSV represents the completion of the preparation stage of the Local Plan.

- 4.8. As such, in accordance with paragraph 216 of the NPPF, when taking planning decisions, the Council may give weight to relevant policies in the LPSV "according to:
- the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
 - the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
 - the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)."
- 4.9. When approving the LPSV for publication and submission to the Secretary of State for independent examination, at the Extraordinary Full Council meeting on 14 December 2017 Members resolved that:
- "(i) That the Local Plan Submission Version 2017 be endorsed as a material consideration to be used in the determination of planning applications and enforcement decisions to be given appropriate weight in accordance with paragraph 216 of the National Planning Policy Framework."
- 4.10. Accordingly, when dealing with applications for planning permission this means that Development Management officers and Councillors must continue to determine applications in accordance with the adopted Local Plan (1998) and Alterations (2006), unless material consideration indicate otherwise. **In all cases**, officers and Members must have regard to the LPSV, so far as material to the decision, and assess whether the proposal under consideration accords with the LPSV as a material consideration.
- 4.11. The Submission Version is the Local Plan which the Council intends to adopt, subject to the recommendations of the Local Plan Inspector appointed to the examine the LPSV. It has been the subject of extensive consultation at each stage of the Local Plan's preparation. (Further details are provided in the Consultation Statement prepared by the Council at <http://www.efdclocalplan.org/submission-version-2017/>).
- 4.12. The policies and site allocations within the LPSV have been prepared having regard to and are consistent with national planning policy requirements and are supported by a comprehensive and up-to-date evidence base and Sustainability Appraisal. As the Council considers the LPSV to be sound and legally compliant, unless otherwise indicated in future specific advice from the Planning Policy team, Development Management officers and Councillors should accord relevant LPSV policies and allocations **significant weight** in the determination of applications.
- 4.13. The Council will submit the LPSV to the Secretary of State for independent examination in March 2018. The programming of the examination is a matter for the appointed Plan Inspector but the Council expects the examination hearings to be held in Autumn 2018. Adoption of the Epping Forest District Local Plan is expected in 2019.

5. Prematurity

- 5.1. Planning Policy Guidance (PPG) on 'Local Plans' (Reference ID: 12-019-2014030) states that the weight to be attributed to emerging plans increases during the plan-making process. The PPG on 'Determining a planning application' (Reference ID: 21b-014-20140306) stipulates that an application that is premature is 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.
- 5.2. In accordance with the PPG (Reference ID: 21b-014-20140306) such circumstances are likely to be limited to situations where:
 - (a) 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
 - (b) The development would prejudice the delivery of the emerging allocations.
- 5.3. Before deciding to refuse planning permission on grounds of prematurity, the Council must identify clearly how the grant of permission for the development concerned would prejudice the outcome of the plan-making process and prejudice the delivery of emerging allocations.
- 5.4. Given the substantial and extensive up-to-date evidence and site selection work which underpins the housing allocations in the LPSV, it is very unlikely that the Council will support any proposals for development outside of settlement boundaries which are not part of the LPSV allocations, or which are not in accordance with the Local Plan Rural Exceptions policy with respect to housing, or which do not comply with national and local policies concerning Green Belt and brownfield land. Larger scale developments within settlement boundaries which come forward on sites which are not allocated will be assessed against national, adopted Local Plan, and LPSV policies; consideration will be given as to whether the proposal would in any way prejudice the implementation of site allocations within the LPSV.

6. Local Plan Implementation

Strategic Masterplans, Design Codes and Concept Framework

- 6.1. The LPSV requires future developments in certain areas (as specified on the Policies Map) to be in general compliance with a Strategic Masterplan produced specifically for that area. These areas include:
- East of Harlow (part of the Harlow and Gilston Garden Communities);
 - Latton Priory (part of the Harlow and Gilston Garden Communities);
 - Water Lane Area (part of the Harlow and Gilston Garden Communities);
 - South Epping;
 - Jessel Green;
 - Waltham Abbey North;
 - North Weald Bassett;
 - North Weald Airfield; and
 - Limes Farm.
- 6.2. These Strategic Masterplans will provide a high-level overarching framework to ensure that planning and delivery of development and infrastructure is properly co-ordinated across the Masterplan Area. They will also ensure that development proposals are front-loaded and where possible accelerated.
- 6.3. The Council also requires more Design Codes to be produced for each of the areas in accordance with the principles set out in the respective Strategic Masterplan. These Design Codes will set out detailed design standards and should be used to inform planning applications to be submitted for individual sites. The Design Code also ensures co-ordination between different land parcels within a Masterplan Area and provides a level of certainty to developers of the quality and character of adjacent development.
- 6.4. The LPSV also requires the production of two Concept Frameworks, one for West Ongar and one for South Nazeing. These Concept Frameworks are more 'light-touch' in comparison with Strategic Masterplans but still set out high-level development principles which will ensure that a comprehensive and cohesive approach is taken to the planning and delivery of development and infrastructure in the locality.

Quality Review Panel

- 6.5. The production of Strategic Masterplans, Concept Frameworks, Design Codes, and where appropriate, other planning proposals should be considered and informed through review at key stages by the Council's Quality Review Panel. In general, the Council will expect schemes of more than 50 homes or 5,000 square metres of commercial/other floorspace to be informed by review. Other smaller schemes which are complex or contentious may also be appropriate for review.

7. Infrastructure Pooling

- 7.1. Since 6 April 2015, the requirements of Regulation 123(3) of the Community Infrastructure Levy Regulations 2010 have been in 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.
- 7.2. The IDP provides guidance as to how and when infrastructure requirements associated with development identified within the LPSV should be delivered. The Council is required to work with landowners, promoters, infrastructure providers and other local authorities to determine how infrastructure contributions will be sought and section 106 contribution pooled to provide the necessary infrastructure. Careful consideration therefore needs to be given in relation to the identification and definition of infrastructure projects in relation to future section 106 agreements.

8. Neighbourhood Planning

- 8.1. Neighbourhood Plans were introduced by the Government through the Localism Act 2011. Once they have successfully completed the preparation process and have been made, Neighbourhood plans will form part of the statutory development plan for the District. Applications for development within the relevant neighbourhood plan area must be determined on accordance with the neighbourhood plan, so far as it is material to the application.
- 8.2. To be made, a neighbourhood plan must be in general compliance with the adopted Local Plan for the District and be used positively to encourage sustainable development. Within Epping Forest District, there are currently nine neighbourhood plan being prepared by the respective town or parish council for the area. For further detail on the progress of individual neighbourhood plans, please visit the Neighbourhood Planning on the Council's website:

<http://www.efdclocalplan.org/planning-policy/neighbourhood-planning/>

- 8.3. In certain circumstances, an emerging neighbourhood plan may be a material consideration in the determination of a planning application. in accordance with section 70(2)(aza) of the TCPA 1990 "a post-examination draft neighbourhood development plan, so far as material to the application", Where section 70(2)(aza) applies, the Council must decide the weight to be accorded to relevant policies within an emerging neighbourhood plan, in accordance with paragraph 216 of the NPPF (see above at paragraph 4.8).

- 8.4. In December 2016, the Minister of State for Housing and Planning, Mr Gavin Barwell MP, made a Written Ministerial Statement stating that relevant policies for the supply of housing in a neighbourhood plan that has been made and is part of the statutory development plan, should not be deemed to be 'out-of-date' under paragraph 49 of the NPPF, where all of the following circumstances arise at the time the decision is made:
- This written ministerial statement is less than 2 years old, or the neighbourhood plan has been part of the development plan for 2 years or less;
 - the neighbourhood plan allocates sites for housing; and
 - the local planning authority can demonstrate a three-year supply of deliverable housing sites.

The full Ministerial Statement can be found on the UK Parliament website at <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-12-12/HCWS346/>

9. Housing White Paper and Starter Homes

- 9.1. The provision for starter homes to be defined as affordable housing was included in the Housing and Planning Act 2016. This includes a general duty to promote starter homes [Part 1 Chapter 1 (paragraph 4)] and through regulations place a requirement on local planning authorities to grant planning permission for a residential development of a specified description if the starter homes requirement is met [Part 1 Chapter 1 (paragraph 5) (1)]. However, the regulations are not yet in place and it is not clear when/ whether the current government intends to provide such regulations given the manner in which the matter has been covered in the recent Housing White Paper.
- 9.2. The Housing White Paper "Fixing Our Broken Housing Market" (February 2017) does not seek to introduce such a statutory requirement for starter homes at the present time (refer A124 p99). However it does expect local authorities to deliver starter homes as part of a mixed package of affordable housing of all tenures that can respond to local needs and local markets. The Government has expressed its intention to change the National Planning Policy Framework subject to the Housing White Paper consultation as follows:
- A change to the definition of affordable housing to include, among others, starter homes and affordable private rented housing (A120, p 99 and Box 4, p100)
 - To introduce a household earnings eligibility cap of £80,000 (£90,000 for London) on starter homes.
 - To make it clear that local authorities should seek to ensure that a minimum of 10% of all homes on individual sites are affordable home ownership products (A126, p101). This would include starter homes, shared ownership homes and

discounted market sales products. It would apply to sites of 10 units or more or 0.5+ hectares in size. This applies except for the following types of scheme:

- Build to rent
- Dedicated supported housing, such as residential care homes
- Custom build schemes
- Development on rural exception sites where it should remain a matter of discretion for the local authority. (A128, p101)

9.3. Until the Government responds to the consultation and makes the relevant changes to the NPPF these provisions will not be in place. Until these changes have been made to the NPPF affordable housing provision will be assessed against the policies of the current adopted Local Plan, the emerging Local Plan (Submission Version) and the NPPF as existing and at present Starter Homes will not be considered to meet the definition of affordable housing.

9.4. As part of the Housing White Paper, the DCLG has published a “Planning for the right homes in the right places: consultation proposals” on 14 September 2017. The document sets out a number of proposals to reform the planning system to increase the supply of new homes and increase local authority capacity to manage growth. One of the main proposals in the document was the introduction of a standard methodology for calculating local authorities’ housing need. For the District, the proposed new methodology suggests that the annual housing requirement for the District would be 923 dwellings per annum, which is significantly higher than the housing requirement proposed in the emerging Local Plan.

9.5. For emerging Plans, the consultation document proposed that if a Local Plan is submitted for examination on or before 31 March 2018 or before the revised Framework is published (whichever is later), Local Authorities should continue with the current plan preparation. Epping Forest District Council will submit the Local Plan for examination before 31 March 2018 and will therefore continue to use the current housing requirements and methodology set out in the Plan.

10. Housing Strategy 2017 – 2022

10.1. In 2017, the Council adopted its new Housing Strategy that includes a number of policies relating to the delivery of affordable housing. The main policies relating to the Local Plan are as follows:

- On developments which provide for 11 or more homes (or on land in excess of 1,000sqm gross floor space), the Council will generally seek up to 25% of the affordable homes as shared ownership homes (not as “starter homes”), to assist first time buyers to gain access to home ownership and to meet the National Planning Policy Framework’s requirement for the provision of affordable home ownership properties;

- In order for shared ownership homes to be affordable to as many people as possible, the Council will ensure that:
 - Initial equity sales to individual applicants for shared ownership properties are no less than 20% and no more than 75% of the open market value of the property;
 - For development appraisals undertaken by housing associations for the purchase or development of affordable housing, the assumption used for the average initial equity shares to be sold to applicants across all of the shared ownership properties on the development is no more than 35%, and is reflected in offers made to landowners and developers;
 - Shared owners are able to purchase additional equity shares (staircase) up to full 100% ownership, except for rural housing schemes for which a maximum of 80% equity can be purchased under current Homes and Communities Agency policy; and
 - The initial rent charged for the equity retained by the housing association is equivalent to no more than 2% of the value of the unsold equity per annum, with subsequent rent increases determined in accordance with the relevant housing association's rent setting policy;
- The Council will seek to ensure that housing associations and other providers charge affordable rents at no more than the level of the relevant Local Housing Allowance for the locality;
- The Council will ensure that developers comply with the Council's latest Guidance Note to Planning Applicants on the Submission of Viability and Financial Appraisals for Affordable Housing and will robustly assess and validate Viability Appraisals submitted for developments where developers assert that it is not possible to meet the Council's affordable housing requirements, in order to ensure that as much affordable housing is obtained as viably possible.

A copy of the Housing Strategy 2017 – 2022, which provides further background to these policies can be found here:

<http://www.eppingforestdc.gov.uk/home/file-store/category/436-business-plans?download=4700:housing-strategy-2017-22>

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