

Report to the Cabinet

Report reference: C-014- 2018/19

Date of Meeting: 18 October 2018



**Epping Forest
District Council**

Portfolio: Planning and Governance

Subject: Interim Approach to Managing Recreational Pressures on the Epping Forest Special Area of Conservation

Responsible Officer: Alison Blom-Cooper (01992 564066)

Democratic Services: Adrian Hendry (01992 564246)

Recommendations/Decisions Required:

- (1) That the Interim Approach to Managing Recreational Pressures on the Epping Forest Special Area of Conservation set out at Appendix 1 is adopted as a material consideration in the determination of planning applications and permitted development rights proposals for residential development which would result in a net increase in new homes within the Epping Forest District Council administrative area.**
- (2) That the Service Director for Planning (or any another Service Director (in their absence) or officer duly authorised by the Service Director for Planning) be given delegated authority to undertake minor amendments to the Interim Approach which may arise as a result of consultation responses received as set out in paragraph 11 below in consultation with the Planning and Governance Portfolio Holder.**
- (3) That the level of contribution to be sought from net increases in new residential units within 3km of the Epping Forest Special Area of Conservation arising from the granting of planning permissions and of prior approval consents under permitted development rights shall be as set out in paragraph 10 below.**

Executive Summary:

The Conservation of Species and Habitats Regulations 2017 (Habitats Regulations) came into force on 30 November 2017 and transposes into domestic law the EU Habitats Directive 1992.

The Habitats Regulations implement the purposes of the Habitats Directive, in particular, the protection of certain natural habitats, known as European Sites, that are considered to be under serious threat. Both the Habitats Regulations and the revised National Planning Policy Framework provide that European Sites are afforded the highest levels of protection in the hierarchy of sites designated to protect important features of the natural environment.

Regulation 8 of the Habitats Regulations defines European Sites as, amongst other things, special areas of conservation. Epping Forest has been designated as a special area of conservation – and shall be referred to throughout this report as the SAC.

The legislation provides that where a land use plan or project, either alone or in combination with other plans or projects, is likely to have a significant effect on a European site, the plan-making authority must undertake an appropriate assessment of the implications of the plan or project for that site in view of the site's nature conservation objectives; this is known as a Habitats Regulations Assessment (HRA). This applies to Local Plans produced by local authorities, in addition to Neighbourhood Plans produced by local communities. Such plans set out a broad quantum of housing growth. HRA work must therefore consider the overall impacts of such growth – in-combination with neighbouring authorities – and where there are any likely significant effects, adverse effects on the integrity of the site must be ruled out.

A significant proportion and the most integrated part, of the SAC lies within the Epping Forest District Council administrative area. The remainder lies within the London Boroughs of Waltham Forest and Redbridge (the latter of which accommodates a very small proportion of the SAC). As such the three local authorities have a duty, as a Competent Authority under the Habitats Regulations, to ensure that planning application and permitted development rights decisions comply with those Regulations and do not result in adverse effects on the integrity of the SAC.

This report sets out the proposed approach to managing and mitigating the effects of new residential development on the SAC as a result of additional recreational pressure.

Reasons for Proposed Decision:

To comply with the Council's general obligations as a competent authority under the Habitats Directive [article 6(3)] and Regulation 9(1) of the Habitats Regulations

Other Options for Action:

Not to adopt the Interim Approach to Managing Recreational Pressures on the SAC as a material consideration in the determination of planning applications and permitted development rights schemes which result in a net increase in residential units. This would prevent the Council, as local planning authority, from positively determining such proposals, where appropriate, as advised by Natural England, as the responsible statutory body, in its letter of 15 June 2018 (attached as Appendix 2).

In addition it would mean that the Local Plan may not be seen as deliverable at examination and therefore not be found sound.

Background:

1. In February 2017, the Council entered into a Memorandum of Understanding (MoU) for 'Managing the impacts of growth within the West Essex/East Hertfordshire Housing Market Area on Epping Forest Special Area of Conservation' with Harlow, East Hertfordshire and Uttlesford District Councils, Essex and Hertfordshire County Councils, Natural England and the City of London Corporation as Conservators of Epping Forest. The purpose of the MoU was to ensure that the parties named, worked in partnership to fulfil the following requirements:

- i. to collect and analyse data and evidence related to the impacts of proposed development and growth under the Local Plans to provide sufficient and robust evidence on which to base a strategy for the protection of the SAC;
 - ii. to commit to prepare a joint strategy, based on relevant available data and evidence and to an agreed timetable; and
 - iii. that the joint strategy will address both the requirement to avoid, or effectively mitigate, adverse impacts on the integrity of the SAC from Local Plan-led development and the requirement to prevent deterioration of the SAC features.
2. Policy DM 2 of the Local Plan Submission Version 2017 sets out the approach to considering development proposals in respect of their likely significant effect on both the SAC and the Lee Valley Ramsar. This Interim Approach has been developed in response to the Memorandum of Understanding, to support the implementation of Policy DM 2 and in order to comply with the Council's general obligations as a competent authority under the Habitats Directive and the Habitats Regulations.
3. It should be noted that Natural England, in their response to the publication of the Local Plan Submission Version, set out that *'Further progress needs to be made in progressing the Mitigation Strategy under the MoU before a likely significant effect on Epping Forest as a result of recreational pressure can be ruled out.'* During the Independent Examination of the Local Plan, the appointed Planning Inspector will require evidence to demonstrate that the Council is able to deliver the required levels of development set out in the Plan, and provide for a five year supply of deliverable housing land against objectively assessed housing need targets. Without the strategy, there is a risk that the Local Plan will not be found to be 'sound'. This Interim Approach will form part of that evidence.
4. In order to develop the Strategy to mitigate any likely significant effects on the health of the SAC from recreational pressures arising from new residential development work has been undertaken to:
 - a) Identify the Zone of Influence from within which the 75th percentile of visits to the SAC arise;
 - b) Develop an approach which sets out both the projects identified to mitigate the effect of additional visitors on the SAC, the costs of implementation, and how the monies to pay for the strategy will be secured.
5. A Visitor Survey was undertaken in October/November 2017 which identified a 'Zone of Influence' of approximately 6.2km from the boundary of the SAC, together with an 'inner' area of 3km from within which the median number of visits arose. The survey was considered by Natural England and partners to have been undertaken using a robust methodology which is consistent with surveys undertaken elsewhere seeking to identify a 'Zone of Influence'.
6. The Interim Approach which is the subject of this report has been developed through joint working with the Conservators of Epping Forest and relevant local authorities,

with oversight from Natural England. It should be noted that the Interim Approach covers the whole of the SAC area, not just that part which lies within the Epping Forest District Council administrative area. The other local authorities which have parts of the SAC located within their boundaries are the London Boroughs of Waltham Forest and Redbridge.

7. It is proposed that the Interim Approach will be updated, if necessary, in the second half of 2019 following the outcome of a further visitor survey which will cover the summer period. This will enable a 'sense-check' to be made of the outputs from the 2017 Visitor survey, recognising that this was undertaken during the autumn period. It will also assess the progress of the Masterplanning of the strategic sites identified within the Interim Approach and the contribution that they are likely to make in terms of the provision of Suitable Alternative Natural Green Space (SANGs), which is of sufficient scale, character and form to attract visitors away from the Epping Forest itself. This will then support an assessment of whether there is a need for, in particular, development at North Weald Airfield to make a financial contribution towards the implementation of mitigation schemes, and whether a full contribution for the land south of Epping should be sought.
8. It should be noted that Epping Forest District Council (EFDC) has been advised by Natural England that it is unable to issue any planning permissions for residential development resulting in a net increase in new homes until such time as an interim approach to address both recreational pressures and any air quality effects on the SAC has been adopted. It is understood that this advice, with particular regard to recreational pressures, also applies to other local planning authorities where new residential development falls within the Zone of Influence. (See Appendix 2 attached). It is therefore critical that this Interim Approach is adopted as a matter of urgency because of the effect it is having on the delivery of new homes. The matter of air quality is being considered separately, and will be reviewed following the outputs of air quality modelling work that has been commissioned by EFDC, the results of which are due imminently.

Levels of contributions to be sought

9. The approach to apportioning the costs of implementation of the strategy and measures set out in the Interim Approach has sought to take a proportionate approach having had regard to the findings of the 2017 Visitor Survey and to Environmental and Planning Regulations, as well as national policy and guidance. The total level of contribution to be sought from residential development within the Epping Forest District Council administrative area up to 31 March 2033 is **£1,347,837**. Regulation 70(2) of the Habitats Regulations provides the legal basis for imposing the 'condition or limitation' that planning permission or prior approval is to be subject to a contribution, delivered by way of a Section 106 planning obligation (under Town and Country Planning Act 1990), in accordance with the interim mitigation strategy. The apportionment to the other two competent authorities together with the contribution attributed to this District will fully fund all the mitigation measures projects set out in Appendix 1. The funding provides for a rolling external project evaluation to take place regularly and it is proposed that the costs of individual components may be reviewed as part of an annual updates based on the

outcomes of individual project evaluation if this identifies that there has been either an underestimation or overestimation of the costs attributed.

10. The contribution to be sought from individual residential development schemes within 0 – 3 kms of the boundary of the Epping Forest SAC, where there is a net increase in the number of residential units is as follows:

Cost per dwelling: £352

Residential care home schemes will be assessed on a case by case basis to determine whether they need to make the above contribution, dependent upon the nature and level of care being provided and the likely level of independence of occupiers.

11. Because of the time constraints this report is being brought to the Council's Cabinet at the earliest possible opportunity and therefore final comments with regard to the details of the Interim Approach are awaited from:

- London Borough of Redbridge
- London Borough of Waltham Forest
- Natural England

Comments from the Conservators of Epping Forest on the Interim Approach have been incorporated in the report and are attached as Appendix 3.

Resource Implications:

The Section 106 contributions collected in accordance with the Interim Approach will also fund the costs of employing staff, namely a Mitigation Strategy Delivery Officer and an apprentice. The posts would be managed by the Conservators of Epping Forest. Consequently, the implementation of the Approach, with the exception of negotiating the provision of Strategic Alternative Natural Green Space within the Masterplanning areas of Water Lane, Latton Priory, North Weald Airfield and south of Epping, would not have resource implications for the Council. The resources needed for the Masterplanning work are being provided by the Council's Implementation Team. The costs of entering into planning obligations would be borne by applicants.

Legal and Governance Implications:

The Local Plan, the Interim Approach and the level of contributions identified have been developed in accordance with Government Policy (NPPF) and Planning and Environmental Law.

Safer, Cleaner, and Greener Implications:

The Local Plan contains a policy designed to promote the notion of making good places to live, work and visit. This will include safer by design principles, sustainable development, the provision of alternatives to the car, energy efficiency and environmental considerations as well as quality green infrastructure. The Interim Approach and contributions being sought would promote these objectives.

Consultation Undertaken:

The Local Plan has been developed in partnership with other Local Authorities under the Duty to Co-operate, Local Stakeholders and in consultation with residents. The Interim Approach to Managing Recreational Pressures on the Epping Forest Special Area of Conservation itself has been developed with Natural England, the City of London Corporation (as Conservators of Epping Forest) and relevant local authorities as set out in the Interim Approach attached at Appendix 1.

Background Papers:

Memorandum of Understanding 'Managing the impacts of growth within the West Essex/East Hertfordshire Housing Market Area on Epping Forest Special Area of Conservation'. February 2017. See - <http://www.efdclocalplan.org/wp-content/uploads/2018/02/EB1200-MoU-Impacts-of-Growth-within-the-W-Essex-E-Herts-HMA-on-EF-SAC-February-2017.pdf>

Epping Forest Special Area of Conservation Visitor Survey March 2018. See <http://www.efdclocalplan.org/wp-content/uploads/2018/08/EB715-Epping-Forest-Visitor-Survey-Footprint-Ecology.pdf>

Letter from Natural England dated 15 June 2018 (attached at Appendix 2) including Annex 1 setting out Natural England's additional advice for consideration when undertaking a Habitats Regulations Assessment for Development Affecting Epping Forest SAC.

Risk Management:

If the Council was not to take a pro-active approach to developing and implementing an approach to managing the effects of recreational pressures arising from development on the Epping Forest Special Area of Conservation there is a real risk of being found unsound at Examination. Notwithstanding this the Council, as local planning authority, would be prevented from determining planning applications and applications for prior approval under permitted development schemes which result in a net increase in residential units. This would have an adverse effect on the Council's five year housing land supply position and how it would perform against the government's newly introduced Housing Delivery Test.