

Epping Forest Local Plan

Examination Hearing Statement

Matter 1 – Legal Compliance

Issue 4 – Has the Plan been informed by an adequate process of Sustainability Appraisal (SA)? Have the requirements of the SEA Directive and Regulations been met?

Context

1. Strutt & Parker have participated in the plan-making process on behalf of Croudace Homes (Local Plan Examination Stakeholder ID 19LAD0025) throughout the preparation of the Epping Forest Local Plan, including in relation to the promotion Land east of Epping Road, Roydon for residential development. This has included representations on the Local Plan Submission Version (LPSV) (Regulation 19) consultation (Representation ID 19LAD0025-1 and 19LAD0025-2) in respect of proposed policies SP2 and P9.
2. The LPSV proposes allocation of a small proportion of land which has been promoted through the plan-making process and which is under the control of Croudace Homes (ROYD.R3). Two configurations of Land east of Epping Road, Roydon were considered through the preparation of the Local Plan, identified as sites SR-0306 and SR-0890 in the plan-making process. However, the proposed allocation ROYD.R3 is not commensurate with either.
3. As made clear in our representation on the LPSV, ROYD.R3 is not deliverable as currently proposed to be allocated.
4. This Hearing Statement is made in respect of the Epping Forest Local Plan Examination Matter 1 – Legal Compliance, and concerns Issue 4 (Has the Plan been informed by an adequate process of Sustainability Appraisal (SA)? Have the requirements of the SEA Directive and Regulations been met?). Specifically, it addresses Question 1 of Matter 4, Issue 1:

Is the SA comprehensive and satisfactory and has it sufficiently evaluated reasonable alternatives? In particular, I understand that a “dispersed” pattern of development was pursued as a result of the Community Choices consultation. Were alternative distributions considered through SA, such as a more concentrated pattern, or different dispersal patterns?

5. This Hearing Statement seeks to avoid repeating matters already raised within our representation on the Regulation 19 iteration of the Local Plan.
6. Two appendices accompany this Hearing Statement:
 - Appendix A – Regulation 19 Supplementary Representations
 - Appendix B – Judgment in the case of Cogent Land LLP v Rochford District Council [2012] EWHC 2542 (Admin)

Question 1

7. The above question has been asked within the context of consideration of the legal compliance of the Local Plan. Accordingly, our following response is framed within this context.
8. As such, it sets out our views on whether the Sustainability Appraisal (SA) process, and the preparation of the relevant Environmental Reports, in respect of the Local Plan was legally compliant. The below does not consider the merits of judgements made through the SA process or Council's response to the findings of these. We consider this to be a matter of soundness, as opposed to legal compliance.

Concerns in respect of legal compliance

9. The requirement to undertake SA in respect of the Local Plan derives from the European Directive 2001/42/EC (SEA Directive), the relevant aspects of which in relation to plan-making are transposed into UK law through the Environmental Assessment of Plans and Programmes Regulations 2004 (Statutory Instrument 2004 No.1633) (SEA Regulations).
10. The SEA Regulations require that all reasonable alternatives be considered and assessed to the same level of detail as the preferred approach (Regulation 12);

and that the reasons for the selection of preferred alternative, and the rejection of others, be made set out (Regulation 16).

11. The SEA Regulations also require that every draft plan or programme for which an environmental report has been prepared and its accompanying environmental report (“the relevant documents”) be made available for consultation (Regulation 13). Consultation requirements of Regulation 13 include bringing the preparation of the relevant documents “to the attention of the persons who, in the authority’s opinion, are affected or likely to be affected by, or have an interest in the decisions involved in the assessment and adoption of the plan or programme concerned”. (Regulation 13, Paragraph 2 (b))
12. It is noted that the Council’s approach to meeting the requirements of the SEA Regulations in respect of its emerging Local Plan have been somewhat unorthodox. This does not in itself mean that it is not legally compliant. However, we do have concerns with the approach taken and whether the requirements of the aforementioned SEA Regulations have been met, as discussed below.
13. It is clear that an Environmental Report which seeks to meet the requirements of the SEA Regulations has been produced for the Local Plan (EB204: Sustainability and Equalities Impact Appraisal Non-Technical Summary (AECOM December 2017) (the ‘LPSV SA’).
14. However, firstly, it is noted that the Environmental Report (the LPSV SA) placed reliance on a separate document (the Report on Site Selection (2017)). Our concerns in relation to this approach are set out within paragraphs 9.4 to 9.8 of the Supporting Statement of our consultation response on the LPSV, and are not repeated here. However, in summary, it is not clear if the SEA Regulations allow for the Environment Report to delegate various elements required of it to a separate document; and, in any case, in this instance the separate document relied upon did not contain the pertinent information at the time consultation on the LPSV was undertaken. As a result, neither the Environment Report nor the document referred to within it explained the reasons for the rejection of alternative

sites during the period in which there was opportunity to make representations on the LPSV and accompanying LPSV.

15. Assuming the SEA Regulations do, albeit implicitly, allow for the required functions of an Environmental Report to be performed through a separate document, the Site Selection Report 2017 and the process of its preparation becomes of particular relevance.
16. As noted, key elements of the Site Selection Report 2017 were missing during the consultation on the LPSV and LPSV SA.
17. Subsequent to the statutory consultation on the LPSV, the Council published the missing elements of the Report on Site Selection 2017. This included Appendix B, which provided a series of documents which assessed the suitability, availability and achievability of sites through an iterative process; through which sites which fail to meet certain criteria were rejected, whereas others are ultimately progressed and – subject to the findings of the Site Selection Report – may ultimately be proposed for allocation.
18. We were invited by Epping Forest District Council to supplement our representations made on the (LPSV) on behalf of Croudace Homes, in light of the publication of Appendices B and C to the Site Selection Report 2017.
19. The invitation to supplement our representations was undated, but received by email on 26 March 2018.
20. The issue of who was consulted at this stage is considered relevant, given the consultation requirements of the SEA Regulations, together with the reliance placed on the Site Selection Report 2017 by the LPSV SA to fulfil the requirements of an Environmental Report. I.e. we would expect the Council to have consulted all persons affected or likely to be affected by, or have an interest in the decisions involved in the assessment and adoption of the Local Plan, and invited them to make comments at this point. However, at paragraph 4.21 of the Council's Regulation 22 Consultation Statement (EB115) the Council state that the Council gave the opportunity for "some" respondents to comment on the Report on Site

Selection 2017 appendices, and that only 71 respondents were invited to comment.

21. We took up the Council's invitation to supplement our representations made on the LPSV. A copy of our response is provided as **Appendix A** to this Hearing Statement. We raised several concerns within our supplementary representations vis-à-vis SA and legal compliance. As set out within these representations, we were of the view that defects could be cured, and urged the Council to take action to ensure legal compliance.
22. However, we are unable to identify any evidence that any such action has been undertaken. In particular, we note:
 - a. The Council resolved to submit its Local Plan for examination on 14 December 2017, in the absence of a complete Report on Site Selection (2017). There is nothing to suggest that decision-makers have subsequently taken into account either the Report on Site Selection 2017 (published in full on 14 March 2018, as stated at paragraph 4.21 of the Regulation 22 Consultation Statement), or the consultation responses to these.
 - b. We have identified no evidence of the LPSV SA being updated to reflect the Report on Site Selection 2017, despite this report being of clear importance to the SA process.
 - c. Factual inaccuracies in respect of the Report on Site Selection 2017 brought to the Council's attention do not appear to have been addressed in either the report itself or the LPSV SA.
23. Having regard to the above, it is clear that alternatives have yet to be properly evaluated through SA as part of the plan-making process.

Curing defects to ensure legal compliance

24. As established through the judgment in the case of Cogent Land LLP v Rochford District Council [2012] EWHC 2542 (Admin) (copy provided as **Appendix B**), defects in the SA process can be cured through additional SA work; and such additional work can be undertaken post submission and after the examination has commenced.
25. As such, we do not consider the Epping Forest Local Plan to be irrevocably flawed. On the contrary, we are of the view that the Local Plan can be made to be legally compliant.
26. We consider that the following action is required to be undertaken before the Local Plan can be considered legally compliant in relation to SA:
 - a. The site assessment work undertaken to date be updated to address factual inaccuracies and other matters raised during previous consultation stages.
 - b. Updated site assessment work to be integrated into the SA process.
 - c. EFDC to consider the results of the updated site assessment work, and reconsider rejection of sites based on the previous, flawed, evidence.
 - d. Revised SA – or Addendum to the LPSV SA – be produced in which site assessment work is fully integrated, and in which the reasons for the rejection or selection of sites is set out.
 - e. List of modifications to the LPSV be prepared, accounting for the revised SA / LPSV Addendum, and published for consultation undertaken in accordance with Regulation 13 of the SEA Regulations.
27. It is far from unusual for modifications to be required to be made to a submitted Local Plan. Further, the judgment cited within this Hearing Statement demonstrates that issues in respect of SA can be addressed post submission.

Together, therefore, we consider that the above approach is the most expedient way to ensure the Local Plan is made legally compliant, whilst minimising delays to ensuring an up-to-date Development Plan for the District is put in place, and mitigating the ramifications of this.