

**EPPING FOREST
DISTRICT LOCAL PLAN
EXAMINATION**

**MATTER 1: LEGAL
COMPLIANCE**

ID: 19LAD0055

HEARING STATEMENT

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MATTER 1 – LEGAL COMPLIANCE

Introduction

- 1.1 This Matter 1 Statement has been prepared by Carter Jonas LLP on behalf of Chisenhale-Marsh Estates Company (CMEC). The Statement only responds to the Inspector's Questions which are relevant to CMEC's interests. It is noted that EFDLP is being examined against the 2012 version of the National Planning Policy Framework (NPPF1) and all references to national guidance relate to that document, unless otherwise stated.
- 1.2 CMEC submitted representations to the Epping Forest District Local Plan 2011-2033 (EFDLP) – Rep Id. 19LAD0055). CMEC is promoting land at Coopersale Cricket Club in Coopersale for up to 28 dwellings (Site Ref. SR-0405). The legal compliance related representations by CMEC which are relevant to Matter 1 are as follows:
- Paragraphs 1.5 and 1.6 – Rep Id. 19LAD0055–1
 - Paragraphs 1.10 and 1.11 - Rep Id. 19LAD0055–2
 - Paragraph 2.3 - Rep Id. 19LAD0055–3

Issue 1: In preparing the Plan, has regard been had to national policies and advice; and to Neighbourhood Plans whether “made” or in preparation?

1. Is it necessary to highlight at the outset any significant inconsistencies with either national policy or guidance? Are they robustly justified?

- 1.3 It is considered that EFDLP should be consistent with national policy and guidance, since it would be unsound to take a different approach. As set out in the representations and Hearing Statements for CMEC, it is considered that EFDLP is inconsistent with national policy and guidance in terms of fulfilling the requirements of the Duty to Cooperate (Paragraph 178 to 181 of NPPF1), preparing a Sustainability Appraisal that complies with the SEA Regulations 2004 (Paragraph 165), and meeting objectively assessed housing needs (Paragraph 47). These matters are dealt with in this Statement and CMEC's Matter 3 Hearing Statement.

2. Are there any “made” NPs in the District? If so, has regard been had to them in preparing the Plan? Is there any specific conflict between any policies of the submitted Plan and any made NP?

- 1.4 No comment, except that there is an emerging Epping Town Neighbourhood Plan which is not yet 'made'. The emerging NP is not yet in a final format, and the document has not been submitted for examination or subject to referendum. The designated area for the emerging NP includes the land at Coopersale Cricket Club promoted by CMEC.

Issue 2: Is the Plan legally compliant in respect of how it accords with the Local Development Scheme (LDS) and the Statement of Community Involvement (SCI); and has the consultation carried out during its preparation been adequate?

2. Has the Plan been prepared in accordance with the adopted SCI, 2013, particularly in respect of the following:

- 1.5 In summary, and as explained in the response to Question 2(f) below, EFDLP was not prepared in accordance with the adopted SCI, and therefore it is not legally compliant.

a. How were local residents likely to be affected by proposed site allocations informed?

- 1.6 Paragraph 4.21 of the Regulation 22 Consultation Statement [Doc Ref. EB115] demonstrates that consultation on Appendix B of the Site Selection Report 2018 was limited, and did not include all interested parties or local

residents. Therefore, local residents were not invited to comment on the site selection evidence used to make decisions about which sites to allocate. Therefore, since the consultation on Appendix B was limited, then it is considered that the SCI has not been complied with, and as such the requirements of Section 19(3) of the 2004 Act have not been met and that EFDLP is not legally compliant. The Council will need to explain who was not consulted on the update to Appendix B of the Site Selection Report 2018.

d. Was it reasonable for the Regulation 19 comment period to be held over the Christmas holidays?

1.7 In our experience, where consultation does occur over the Christmas holidays, Councils typically extend the consultation period to ensure that interested parties have sufficient time to respond. The consultation period for Regulation 19 consultation on EFDLP was not extended. It is considered that if it was not possible to extend the consultation deadline then as an alternative the Council could have notified interested parties of an intention to consult on EFDLP much earlier i.e. before the document was reported to Full Council, which would have made people aware of a forthcoming consultation. The actual time available to comment on EFDLP was reduced because consultation occurred during the Christmas and New Year period.

f. Does the absence of Appendix B of the Site Selection Report (and potentially other documents) at the Regulation 19 stage contravene the requirements of the SCI? If so, what are the implications of this for the test of legal compliance?

1.8 Appendix B of the Site Selection Report [Doc Ref. EB805 and EB805 A to P] was not available at Regulation 19 stage, and consultation on Appendix B when it was published in March 2018 was limited as described in Paragraph 4.21 of the Regulation 22 Consultation Statement [Doc Ref. EB115]. The consultation process for EFDLP does not comply with the SCI which means that EFDLP has not been prepared in accordance with the requirements of the Planning & Compulsory Purchase Act 2004 (2004 Act) or the Town and Country Planning (Local Planning) (England) Regulations 2012 (2012 Regulations).

1.9 Section 18 of the 2004 Act 2004 requires a local planning authority to prepare a statement of community involvement which sets out how those with an interest in development matters in an area will be involved in the plan-making process. Section 19(3) of the 2004 Act requires a local planning authority to comply with the statement of community involvement when preparing a development plan document. Regulation 8(2) of the 2012 Regulations requires a local plan to contain a reasoned justification of the policies contained in it. Regulation 17 defines a number of terms which are relevant to the preparation of local plans, including the term "proposed submission documents" which includes supporting documents relevant to the preparation of the local plan. Regulation 19 relates to the publication stage of a local plan, and requires that before a plan is submitted to the Secretary of State, a local planning authority must make the proposed submission documents, which includes the supporting documents, available for consultation.

1.10 The SCI includes a number of references to the availability of studies prepared to support the EFDLP as follows. Paragraph 7 states: "*The local plan is a document which outlines the policies which will influence development in the District up until 2033. Both the Local Plan and the supporting studies will be available to view on the Council's website*". Paragraph 8 is within a section on supporting documents, and states: "*There are a number of studies which are used as background evidence to the main Local Plan document. The studies are used to help guide the policies that are going to be in the final document and perhaps identify options that are not feasible. These will be available from the Council offices or on the Council's website when they are finalised*". Paragraph 14 is within a section that deals with the evidence gathering stages of a local plan, and states: "*This process of gathering evidence including via engagement, will also help to make sure that the information used can be seen as 'robust' by the Inspector towards the latter stage of the processes*". The updated version of Appendix B of the Site Selection Report, which informed decisions about the sites to allocate in EFDLP, was not available during the Regulation 19 consultation stage (of the 2012 Regulations). Therefore, firstly, the SCI has not been complied with, and as such the requirements of Section 19(3) of the 2004 Act has not been met, and means that EFDLP is not legally compliant. Secondly, the reasoned justification for the selection of sites in EFDLP was not made at Regulation 19 stage, since the absence of evidence on the outcome of the site selection process made it impossible for statutory consultees and all those with an interest in development matters within the area to comment on the 'justified' soundness test because it specifically relates to the evidence base.

1.11 Appendix B of the Site Selection Report was eventually made available in March 2018, and after the Regulation 19 stage had ended. Paragraph 4.21 of the Regulation 22 Consultation Statement [Doc Ref. EB115] demonstrates that consultation on Appendix B was limited to only those who previously submitted representations about the non-availability of site selection documents. There was no mention on the Council's website that Appendix B had been published for consultation during the consultation period. The consultation period only lasted 4 weeks, between 26th March and 23rd April 2018. Therefore, the consultation on the Appendix B was limited, and as such the consultation process does not comply with the SCI which means that the requirements of Section 19(3) of the 2004 Act have not been met and that EFDLP is not legally compliant and is unsound.

3. Did the Council's consultation process prior to inviting representations on the Regulation 19 version of the Plan offer interested parties the opportunity for meaningful engagement? In particular:

h. Has the inclusion and exclusion of specific sites only at the Regulation 19 stage denied some interested parties this opportunity?

1.12 CMEC intends to provide detailed comments on the outcome of the site selection process between draft and pre-submission stage of EFDLP for the land at Coopersale Cricket Club site in response to Question 3 (Issue 1 of Matter 5: Site Selection Methodology and Viability of Site Allocations). The land at Coopersale Cricket Club (in conjunction with the adjacent Coopersale and Theydon Garnon Primary School Playing Fields) was allocated for approximately 19 dwellings was allocated in Draft EFDLP [Doc Ref. EB123], and representations were submitted on behalf of the landowner in support of that allocation, with reference to the positive findings of the Site Selection Report 2016 [EB801 and EB801A to AC], the Green Belt Assessment Phase 2 [EB705A and B] and Interim Sustainability Appraisal [EB202 and 202A]. It is reasonable to expect that a site allocated at draft local plan stage would be carried forward into the proposed submission version, unless there is substantial new evidence or there has been a significant change in circumstances; as will be set out in the Matter 5 Statement for CMEC the evidence provided in the Site Selection Report 2018 does not support the decision to exclude the former draft allocation at land at Coopersale Cricket Club (Site Ref. SR-0405) from EFDLP, and it is considered that the evidence demonstrates that the site should be reallocated.

i. What action did the Council take to inform interested parties about significant changes to the Plan?

1.13 The Council did not inform CMEC of its intention to delete the land at Coopersale Cricket Club at pre-submission stage for EFDLP.

Issue 3: Has the Duty to Cooperate, as required by S33A of the Planning and Compulsory Purchase Act, been met?

1. The strategic cross-boundary issues addressed by the Co-operation for Sustainable Development Board are set out in Section 3 of the Duty to Cooperate Statement, December 201 (EB119). Has the Duty to Cooperate been met in respect of these matters and are there any significant omissions?

1.14 The Duty to Cooperate Statement [Doc Ref. EB119] seeks to explain how the requirements of the Duty to Cooperate (DtC) have been met. Paragraph 3.08 to 3.13 of the Duty to Cooperate Statement seek to describe the joint working on housing and economic needs. The following should be noted:

- the updated West Essex and East Hertfordshire Strategic Housing Market Assessment was published in July 2017 (SHMA Update 2017), and sufficient time was available for the findings on objectively assessed housing need to be incorporated into EFDLP;
- there is no evidence in the Duty to Cooperate Statement that the decision not to meet the objectively assessed housing needs in the SHMA Update 2017 was discussed or agreed with neighbouring authorities;
- all of the other neighbouring authorities within the HMA are meeting the findings SHMA Update 2017 through their respective local plans; and,

- Paragraph 2.10 indicates that the objectively assessed housing needs derived from the SHMA Update 2017 will be subject to future discussion but there is no indication as to how or when those needs will be met.

1.15 As set out in Paragraph 156 of NPPF1, housing is one of the strategic priorities where cross boundary discussions should take place through the DtC process. It is clear that the DtC process has not been completed for EFDLP in terms of how the objectively assessed housing needs across the HMA will be met, and this represents a significant omission and demonstrates that EFDLP is not legally compliant and is not sound.

3. Does the decision of Epping Forest District Council and/or the other Local Authorities comprising the Housing Market Area (HMA) not to meet the Objectively Assessed Need for housing as found by the Strategic Housing Market Assessment July 2017 (EB407) represent a failure of the Duty to Cooperate? What cooperation took place to seek to meet this need within the HMA?

1.16 Paragraphs 3.8 to 3.13 of the Duty to Cooperate Statement deals with housing and economic needs. Paragraph 3.10 refers to the outcome of the Memorandum of Understanding on the Distribution of Objectively Assessed Housing Need across the West Essex/East Hertfordshire HMA (MoU March 2017) and the findings of the SHMA Update 2017. The MoU March 2017 included an agreement that the EFDLP would accommodate 11,400 dwellings between 2011 and 2033, and the SHMA Update 2017 demonstrated that the full objectively assessed housing need for Epping is 12,573 dwellings. There are a number of concerns with the outcome of the approach set out in Paragraph 3.10 of the Duty to Cooperate Statement in respect of the requirements of the DtC process.

1.17 Firstly, the SHMA is incorrectly described as an ‘interim’ document when it is actually an update to take into account new household projections; the apparent status of the document is not a reason to justify no discussions or agreement on how to incorporate the findings into EFDLP.

1.18 Secondly, it is stated that: *“The Council will continue to work with its partnering authorities in order to refine this work as necessary following adoption of the Local Plan”*, which clearly demonstrates that the requirements of the DtC have not been fully complied with for EFDLP in that discussions on objectively assessed housing needs have not been completed. There is no evidence of discussions that any agreement exists between Epping Forest District Council and neighbouring authorities on how to deal with the findings of the updated SHMA including that the Council can opt out of meeting the identified need or that any ‘refinements’ to that work will be undertaken or are necessary.

1.19 Thirdly, it is unlikely that the SHMA will be updated in the future, and any discussions on the level of housing need will be limited, because the Government has introduced a standard methodology for calculating objectively assessed housing need.

1.20 It is considered that there is failure of the DtC for EFDLP in respect of the strategic priority of housing, and it is unsound.

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?

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?

1.21 The CMEC representations did not specifically comment on the Sustainability Appraisal [Doc Ref. EB204] process, but did refer to the findings in the SA for the land at Coopersale Cricket Club site. CMEC has two concerns within the SA process. Firstly, the outcome of the SA has not informed the policies in EFDLP. Secondly, the proposed submission version of EFDLP pursued options which were not identified as reasonable options in draft EFDLP [Doc Ref. EB123].

- 1.22 The conclusion of the SA for development at Coopersale (see pg. 125 of Doc Ref. EB204) identifies development within the settlement boundary and development in the Green Belt to the south east as the most suitable strategic option. It states that:

“This strategic option lies predominantly within the existing settlement boundary and encompasses an area of Green Belt to the south-east of Coopersale. The Green Belt Review: Stage 2 (2016) concluded that the loss of this area would have limited impact upon the Green Belt. Overall, this strategic option would maximise opportunities to focus development in the most sustainable locations within the settlement, which are in close proximity to existing community facilities, and to use previously developed land within the settlement (where this would maintain adequate open space provision within the settlement), in line with the land preference hierarchy set out in the Site Selection Methodology. This strategic option would also minimise any harm to the wider landscape around the settlement, and lies entirely within Flood Zone 1.”

- 1.23 The outcome of the SA has not informed the policies in EFDLP, in that there is no evidence from the appraisal process or change in circumstances to alter previous decisions about the allocation of sites at draft EFDLP stage i.e. land to the south east of Coopersale (including land at Coopersale Cricket Club) was identified as a more suitable strategic option in the Sustainability Appraisal but was removed as an allocation at proposed submission EFDLP stage.
- 1.24 The proposed submission version of EFDLP pursued options which were not identified as reasonable options in draft EFDLP. Draft Policy P12 and Figure 5.22 of draft EFDLP [Doc Ref. EB123] included an allocation at land at Coopersale Cricket Club and Coopersale and Theydon Garnon Primary School Playing Fields for approximately 19 dwellings. Pg.184 of draft EFDLP identified no alternative spatial options for residential sites within Coopersale, and yet the option of deleting the site allocation at Coopersale Cricket Club (Site Ref. SR-0405) was the selected approach in EFDLP. Therefore, the development strategy pursued in EFDLP has not followed from the findings or any options identified in the SA or draft EFDLP.
- 1.25 Therefore, the SA is not comprehensive and robust in that the findings have not informed the allocation of sites in EFDLP or the deletion of sites allocated in draft EFDLP including land at Coopersale Cricket Club.

