

**EPPING FOREST  
DISTRICT LOCAL PLAN  
EXAMINATION**

**MATTER 1: LEGAL  
COMPLIANCE**

**ID: 19LAD0121**

**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 Pigeon Investment Management Ltd (Pigeon) to respond directly to the Inspector's questions for this Matter. The Statement only responds to the Inspector's Questions which are relevant to Pigeon's interests. Representations were submitted to the Epping Forest District Local Plan 2011-2033 (EFDLP) on behalf of Pigeon (Id. 19LAD0121). Pigeon are promoting land East of Epping for a residential-led mixed use development for around 400 dwellings (or greater) (Site Ref. SR-0153), which is generally consistent with the 2016 draft EFDLP (Regulation 18) which proposed at least 930 homes shared between South (not the Regulation 19 South) and East, but with East having a frontage onto Stewards Green Road included to provide independent access to East Epping and south being land east of the railway line. Pigeon has also promoted a more extensive area of land at East Epping based on Garden Settlement principles, replacing the allocation of 950 homes South of Epping. Alternatively, East Epping could in full or part supplement the South Epping preferred allocation.
- 1.2 East Epping has been promoted as a site that could deliver a mix of uses providing added benefits for Epping including: a range of housing typologies including a high proportion of bungalows and self-build plots; a high quality mixed use community hub which could include a local convenience store and doctor's surgery and car parking to serve the local facilities and nearby tube station; a C2 Care Village; Primary School site; potential leisure centre with sports pitch provision; and an Eastern link road between Steward's Green Road and Stonards Hill which would assist in reducing traffic having to travel through the Town Centre.
- 1.3 The legal compliance related representations relevant to Matter 1 are as follows:
- Paragraphs 1.5 and 1.6 – Rep Id. 19LAD0121–1
  - Paragraphs 1.10 and 1.11 - Rep Id. 19LAD0121–2
  - 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?*

- 1.4 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 Pigeon, 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 the National Planning Policy Framework 2012 (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 Pigeon's Matter 3 Hearing Statement.

*2. Are there any “made” Neighbourhood Plans (NP) 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?*

- 1.5 The Council will be able to confirm the NPs that have been 'made'. The emerging Epping Town Neighbourhood Plan is relevant to the representations for Pigeon, in that the decision to delete the draft allocation at land East of Epping from the proposed submission EFDLP was in part based on the conclusion that the selected allocation at land South of Epping better supports the emerging Epping Town Neighbourhood Plan. However, as set out in Pigeon's April 2018 supplementary response to its representations to Paragraphs 1.10 to 1.11, it was clear that the decision to delete the draft allocation at land East of Epping from EFDLP cannot have been based on the emerging Epping Town Neighbourhood Plan since an initial draft NP document was prepared by a separate NP Working Group, and the document was only considered by the Full

Town Council in April 2018 and had not been subject to any public consultation before then. The draft Epping Town Neighbourhood Plan was eventually subject to consultation during Summer 2018 but has not yet been finalised or submitted for examination or subject to referendum. Therefore, it cannot be claimed, as it is in the Site Selection 2018 evidence [Doc Refs. EB805 and Appendix B EB805 A to P], that land South of Epping better supports the emerging Epping Neighbourhood Plan compared with alternative sites e.g. land East of Epping, when the document had not been considered by the Full Town Council when the Site Selection Report was prepared and the document is still at an early stage in the process, and is not 'made'.

**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:

1.6 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?

1.7 Paragraph 4.21 of the Regulation 22 Consultation Statement [Doc Ref. EB115] demonstrates that consultation on Appendix B and Appendix F 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 and Appendix F of the Site Selection Report 2018.

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

1.8 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?

1.9 Appendix B (and Appendix F) 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).

1.10 Section 18 of the 2004 Act 2004 requires a local planning authority to prepare a SCI 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 SCI 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.

1.11 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.

1.12 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 26<sup>th</sup> March and 23<sup>rd</sup> 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?*

1.13 Pigeon intend to provide detailed comments on the outcome of the site selection process between draft and pre-submission stage of EFDLP for the land East of Epping in response to Question 3 (Issue 1 of Matter 5: Site Selection Methodology and Viability of Site Allocations). The land East of Epping 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 Pigeon’s Matter 5 Statement the evidence provided in the Site Selection Report 2018 does not support the decision to exclude the former draft allocation at land East of Epping (Site Ref. SR-0153) from EFDLP.

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

1.14 The Council did not inform the landowner or Pigeon of its intention to delete the land East of Epping 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?*

- 1.15 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, 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 2017 Update 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 2017 Update will be subject to future discussion but there is no indication as to how or when those needs will be met.
- 1.16 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?*
- 1.17 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 updated West Essex and East Hertfordshire Strategic Housing Market Assessment July 2017 (SHMA Update 2017). The MoU included an agreement that the updated SHMA 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.
- 1.18 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.
- 1.19 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.
- 1.20 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.
- 1.21 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?

1.22 The Pigeon representations to Paragraph 1.9 (Rep Id. 19LAD0121–29) comment on the Sustainability Appraisal process. In summary, the concerns within the SA process are as follows:

- 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 e.g. Eastern expansion of Epping was identified as “a more suitable strategic option” in the Sustainability Appraisal but was removed as an allocation at proposed submission EFDLP stage.
- The proposed submission version of EFDLP pursued options which were not identified as reasonable options in draft EFDLP. Policy P1 and supporting text from draft EFDLP, which included an allocation at land East of Epping. Pg.124 of draft EFDLP identified potential alternative options for the preferred residential allocations, which in summary were as follows: expansion to the south-west; expansion to the north; or expansion to the north-east. The option of increasing the quantum of development to the south or deleting the expansion to the east were not identified or assessed as options, and yet this 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.
- The SA has not properly assessed the higher objectively assessed housing need figure derived from the SHMA 2017 update, which must provide more positive effects on the housing related sustainability objective compared to the lower housing target in EFDLP – Pigeon provide detailed comments on this issue in response to Question 4a (Issue 1 of Matter 3: The Quantitative Requirements for Development).
- The outcome of the transport assessment in the SA has not informed the allocation of sites in EFDLP, since the score for the transport related sustainability objectives would have improved if sites which are well-related to the town centres and accessible to public transport were allocated for strategic development e.g. land East of Epping was allocated at draft EFDLP stage.

1.23 Therefore, the SA is not comprehensive and robust in that it has not properly assessed the higher objectively assessed housing need figure derived from the SHMA 2017 update, which was a reasonable alternative. The additional concerns with the SA are that the findings have not informed the allocation of sites in EFDLP.

2. The SA Report of 2017 (EB204) indicates that the Plan will have either negative or minor negative effects in relation to the following SA objectives: biodiversity and green infrastructure; the historic environment; land and waste; and landscape. Have reasonable alternatives been considered to seek to avoid these effects and, if they are unavoidable, is the Plan justified?

1.24 No additional comments on the assessment of reasonable alternatives.

#### **Issue 5: Have the requirements of the Conservation of Habitats and Species Regulations 2017 been met?**

1. Is the Council’s HRA process consistent with the *People Over Wind, Peter Sweetman v Coillte Teoranta* Judgement?

1.25 The representations submitted for Pigeon did not comment on the HRA. It is noted that the Habitats Regulations Assessment for EFDLP [Doc Ref. EB206] predates the above Judgement, and therefore the Plan has not been checked for consistency with the outcome of the Judgement.

