



Epping Forest District Council: Examination of the District Local Plan 2011 – 2033

Matters and Issues

MATTER 1: Legal Compliance

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

3.1 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?

3.1.1 Natural England confirms that from our perspective **the council has complied with the duty to co-operate** in relation to the biodiversity aspects of the plan. The key area of strategic importance with respect to biodiversity that requires a collective approach are the potential impacts the plan could have on Epping Forest Site of Special Scientific Interest ('SSSI') and Special Area of Conservation ('SAC'), particularly in relation to air quality and recreational pressure on the important SAC habitats (beech woodland and heaths). To address these impacts the council, along with 5 other local authorities, The City of London Corporation ('CoL') as conservators for Epping Forest, and Natural England are co-signatories to the Memorandum of Understanding ('MoU') '*Managing the impacts of Growth within the West Essex/East Hertfordshire Housing Market Area on Epping Forest Special Area of Conservation*' (examination document reference EB1200). The purpose of the MoU is to set out the actions, evidence, monitoring and mitigation required to ensure all of the plans covered by the MoU are compliant with the Habitats Regulations.

3.1.2 Whilst we do not currently agree with the conclusions of the Habitats Regulations Assessment ('HRA') as submitted (see matter 1: issue 5 for further details) the level of co-operation with Epping Forest District Council remains high.

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?

4.1 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?

4.1.1 Natural England do not generally hold a view on concentration or dispersal of development but advises that the distribution of allocations should be informed by SA and HRA processes. Given the progression of the plan in the absence of an up-to-date HRA (see matter 1: issue 5 for further details) we are concerned that opportunities to avoid impacts may have been missed. We are supporting Epping Forest in preparing mitigation strategies for their local plan, however, national policy requires that avoidance measure need to be considered in the first instance.

4.2 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?

- 4.2.1 Natural England notes that many of the impacts identified relate to proximity to Epping Forest SSSI/SAC. Our advice relating to the avoidance and mitigation of indirect impacts (through recreational pressure and air quality) is covered under issue 5 but note also our response to part 1 of issue 4.
- 4.2.2 In our regulation 19 response (dated the 26th of January 2018), Natural England raised concerns regarding the findings of the site selection process not being carried through to the SA summary of impacts with particular reference to SSSIs. Natural England remains of the view that the SA should clearly identify allocations which have the potential to impact upon SSSIs and that any necessary avoidance/mitigation requirements should be enshrined in the allocation policy where applicable.
- 4.2.3 With regards to ecological features that do not form part of our core remit, such as local wildlife sites and ancient woodland, we refer you to paragraph 17 of the National Planning Policy Framework which advises that *'allocations of land for development should prefer land of lesser environmental value'* where consistent with other policies and the protections conferred by paragraphs 117 and 118. All developments should seek to deliver net gains for biodiversity and allocation policies should seek to protect any key ecological features identified.
- 4.2.4 The protection and enhancement of green infrastructure, whilst important in its own right for the health, wellbeing and ecological benefits (amongst others) it provides should also be considered a key part of any mitigation strategy for Epping Forest SAC. Diverting and retaining new and existing users onto non-designated green spaces should be considered one of the principle avoidance techniques. Negative impacts on the green infrastructure network have the potential to increase recreational pressure on the SAC and therefore need to be considered alongside the HRA and mitigation strategy.

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

Natural England is aware that an updated Habitats Regulations Assessment will be submitted by Epping Forest District Council with their written statement for this matter. Natural England will not therefore have had the opportunity to provide any comments on the updated HRA which will, amongst other things, address recreational pressure and air pollution impacts. Our advice in this statement is therefore related to the HRA Report dated December 2017.

Natural England provided detailed written advice to Epping Forest District Council in a letter dated 29th March 2018 (attached) outlining our concerns in relation to how the December 2017 HRA needed to be updated to properly address air quality and recreational impacts through an appropriate assessment. This included detailed advice on how the air quality modelling and growth scenarios should be defined.

5.1 Is the Council's HRA process consistent with the People Over Wind, Peter Sweetman v Coillte Teoranta Judgement?

- 5.1.1 It is Natural England's view that the December 2017 version of the HRA is not considered to be compliant with the *"People Over Wind Judgement"* as it did not specifically include the Appropriate Assessment stage of the HRA process, and took account of mitigation measures at the screening or "likely significant effect" stage of the HRA process. This approach is not consistent with this judgement.

5.1.2 However, we understand that the updated HRA will be restructured to ensure there is a 'screening' and an 'appropriate assessment' stage for addressing impacts on Epping Forest SAC and that mitigation measures will only be taken into account at the appropriate assessment stage of the HRA process.

5.1.3 We should also advise that other recent CEJU Judgements (namely, Cases C-293/17 and C-294/17 Coöperatie Mobilisation for the Environment UA and Others v College van gedeputeerde staten van Limburg and Others) have also been made since the submission of the December 2017 HRA. These later judgements, will in our view, have significant implications for the updated HRA particularly in relation to assessing and mitigating air pollution impacts. We will provide further written advice as to whether in our view the final updated HRA is compliant with both the 'People Over Wind' judgement as well as with other recent CEJU Judgements relevant to the updated HRA when this is made available.

5.2 The Habitats Regulations Assessment of the Regulation 19 Local Plan (EB206 & 206A) identified that, without mitigation, the Plan would result in likely significant effects upon the Epping Forest SAC, either alone or in combination with other plans or projects, in respect of recreational pressure; urbanisation; and air quality. Is it correct that no likely significant effects have been identified for the other relevant designated sites (Lee Valley SPA/Ramsar Site; or Wormley-Hoddesdonpark Woods SAC)?

5.2.1 Yes Natural England agrees with this conclusion in relation to likely significant effects for the Lee Valley SPA/Ramsar Site and Wormley-Hoddesdonpark Woods SAC.

5.3 Both Natural England and the Conservators of Epping Forest have raised concerns about how the "Baseline", "Do Minimum" and "Do Something" scenarios have been compared in the HRA process to identify likely significant effects. What is the relevance of these terms and is the HRA methodology valid in this respect?

5.3.1 Natural England wrote to Epping Forest District Council on 29th March 2018 (attached) providing further detailed advice on how the appropriate assessment stage of the HRA needed to be amended to ensure compliance with the Habitats Regulations. This included detailed advice in relation to the air quality and transport modelling and the way the various scenarios should be defined and calculated. In summary, this advice provided information on the various scenarios as described below.

5.3.2 **The baseline scenario** - To assess the scale of effect of changes in air quality linked to the Local Plan 'alone' and 'in combination' the HRA needs to predict the scale of change in transport movements (expressed in AADT) against an environmental baseline. The chosen environmental baseline used in the HRA only uses traffic generated since 2014, presumably because this was the best traffic flow data available at the time of Local Plan HRA submission. We had concerns that the dwellings developed in accordance with the local plan (allocation or windfall) between 2011 (local plan start date) and 2014 (traffic baseline data), would not be included in the traffic baseline and hence the environmental baseline for traffic flow may be higher than expected.

5.3.3 The environmental baseline for traffic modelling should aim to represent a situation prior to the outputs of the Epping Local Plan or any 'in combination' plans and is the baseline against which all other scenarios should be compared against.

5.3.4 After discussions with EFDC and their consultants it was agreed that in terms of calculating the baseline scenario the approach would be acceptable given:

- a) there wasn't any traffic flow data available for the years 2011-2014 and

- b) the amount of housing in question (referred to as pre 2014 housing) was deemed to be relatively small, compared to the total amount of housing that would come forward in the remaining years of the local plan.
- 5.3.5 **Do Minimum scenario** is defined in the HRA as the change in flows due to (a) delivery of existing planning permissions in the HMA and (b) general background traffic growth as a result of population growth expected to 2033 without any of the Local Plan relevant HMA Options. In Habitats Regulations terms, we advised that the Do Minimum situation (and related traffic flow figures) cannot be regarded as the appropriate reference baseline to calculate the traffic flow change attributable to the Local Plan. The baseline should be set at a traffic flow level before any permitted development had been built. We also advised that the TEMPRo model datasets used for calculating the general background traffic growth includes Local Plan-led housing growth from relevant Local Plans. We advised that this should be considered as part of the 'in combination' HRA. The baseline figure as described above is the relevant scenario against which other scenarios should be compared against.
- 5.3.6 **Do Something Scenario** - we advised that air quality assessments should be undertaken to calculate the scale of change in air quality for each year between 2014 – 2033, attributable to the following scenarios:
- i. EFDC Local Plan 'Alone',
 - ii. EFDC Local Plan 'in combination' with other HMA authorities only, without Local Plan-led residential growth in relevant non-HMA authorities
 - iii. EFDC Local Plan 'in combination' with other HMA and relevant non-HMA authorities.
 - iv. The baseline needs to be modelled for the situation with no increases in current traffic for the years between 2014 and 2033. This will show the predicted scale of AQ change attributable to technology and fuel improvements.
- 5.3.7 We understand that Epping Forest District Council commissioned their consultants AECOM to update their HRA to address this advice. Provided this is the case Natural England will be able to advise that the methodology used for the various growth scenarios is compliant with our March 2018 advice. However, we cannot comment on whether we agree with the conclusions of the updated HRA until we have had the opportunity to consider the modelled outputs, any proposed mitigation measures and justifications for the conclusions. Consequently, we cannot currently agree with the conclusion of no adverse effect as detailed in the December 2017 HRA with respect to air pollution impacts. As mentioned in our response to question 1, we also need to consider the conclusions of the updated HRA in light of recent CEJU Judgements.
- 5.4 Does the HRA process for screening Plan policies in or out of the assessment remain valid in light of up to date and emerging evidence on visitor behaviour and traffic impact? For example, recent visitor survey information seems to indicate that the Zone of Influence for recreational pressure on Epping Forest SAC is larger than was thought when the Plan was submitted. Has this resulted in any policies and/or site allocations being wrongly screened out of the assessment? If so, what should be done?**
- 5.4.1 **Recreational Impacts:** The HRA dated December 2017 did not properly reflect the findings of the visitor survey information undertaken by Footprint Ecology and did not adequately consider the resulting Zones of Influence (Zoi). We understand that the updated HRA will re screen policies and site allocations to reflect the Zoi. There is also a commitment to undertake a further visitor survey in the summer months to address any seasonal variations in visitor behaviour (the previous survey was undertaken during October/November 2017) and to test whether the Zoi needs to be changed.
- 5.4.2 The purpose of the Visitor Survey was to identify a recreational zone of influence and to identify the distance the majority of visitors will travel to visit Epping Forest SAC. This report identified that 75% of visitors travelled up to 6.2Km to the SAC. This zone of

influence should then be used in the Mitigation Strategy to identify which housing allocations would need to be subject to developer contributions to pay for recreational impacts.

- 5.4.3 Natural England advises that the following policies and housing allocations (including all associated sub allocations where relevant) should be re –screened to identify any recreational pressure impacts on Epping Forest SAC as they are within the 6.2Km Zone of Influence (note other policies may need to be re-screened to ensure complete compliance with the People over Wind Judgement as well as for other impacts such as air pollution, water quality or water quantity impacts):

Table 1: Policies that require re screening to address recreational pressure impacts

Policies	Housing Allocations within the 6.2KM ZOI
SP2 Spatial development Strategy	P1 Epping
SP4 Development and Delivery of Garden Communities in Harlow and Gilston Garden Town	P2 Loughton
SP5 Garden Towns Strategic Allocations	P3 Waltham Abbey
DM5 Green and Blue Infrastructure	P5 Buckhurst Hill
DM6 Designated and Undesignated Open Spaces	P6 North Weald Basset
	P7 Chigwell
	P11 Thornwood
	P12
	P13 Rural Sites?? CHECK
	P14 Rural Sites

- 5.4.4 **Air Quality Impacts:** It is our understanding that EFDC were considering inclusion of improvement works to the Wake Arms Roundabout, as a physical transport mitigation measure. We also note that improvements to the Wake Arms roundabout is highlighted in the Infrastructure Development Plan as being regarded as “essential” to support the growth and development in the Local Plan (See Table 8 ref DW6 of the Infrastructure Delivery Plan Part B Report (Infrastructure Delivery Schedule)). The land take within the SAC associated with this proposed road improvement would constitute an additional large scale impact on the SAC. If this proposal is still deemed as necessary and essential to support the growth and development in the local plan then these impacts will need to be assessed in a revised / updated HRA. This would apply to any other road or transport schemes, such as improvements to Robin Hood Roundabout, highlighted as being essential to the plan where there would be a direct impact on the SAC. If the Wake Arms roundabout is no longer deemed necessary then the Infrastructure Development Plan and any associated policies should remove any reference to the need for such provision. Please see our additional comments in relation to the Wake Arms Roundabout in question 11.

5.5 For each likely significant effect identified for Epping Forest SAC, has an appropriate assessment been carried out to ascertain that its integrity will not be adversely affected?

- 5.5.1 The December 2017 HRA did not undertake detailed appropriate assessments for each significant effect, some of the more detailed assessment was undertaken at the screening stage of the process. Natural England advised at the time of the Regulation 19 consultation that there was insufficient information provided on recreational and air pollution impacts to enable Natural England to discount an adverse effect on integrity. Until an updated HRA has been submitted we cannot comment further as to whether there will be any adverse effects in relation to air quality or recreational impacts.

- 5.5.2 Natural England also notes from the HRA that Thames Water has confirmed that Rye Meads Waste Water Treatment Works is expected to have headroom until 2036 based on a recent position statement. We have not had sight of that mission statement, it would be helpful if this could be provided as an Annex to the updated HRA so there is certainty that there is sufficient capacity at Rye Meads Waste Water Treatment Works. If there is uncertainty about the capacity of the WWTW then we recommend the following policy wording:

'The Authority will co-operate with utilities and service providers to ensure that appropriate capacity is available to serve new development and ensure new development does not have an adverse effect on the Lee Valley Special Protection Area. New development post 2026 will only be permitted if the required capacity is available at Rye Meads Sewage Treatment Works, including any associated sewer connections.'

5.6 In preparing any appropriate assessment, has avoidance of harm been considered before mitigation or compensation? If not, should it have been?

- 5.6.1 The Local Plan has been developed to ensure that any development including employment or housing allocations do not directly impact on any European protected sites, with the exception of the transport improvement proposals for the Wake Arms Roundabout. So in that sense the strategy has attempted to avoid direct harm. However, due to the levels of growth proposed it has not been possible to avoid all indirect impacts. To minimise this harm mitigation measures are being proposed.
- 5.6.2 With respect to recreational impacts on Epping Forest SAC, work has been undertaken to develop an interim Mitigation Strategy to identify Strategic Access Management Measures. Plan policy DM2 requires specific strategic allocations to make a financial contribution towards access management measures. It also requires development, and particularly strategic developments to "*make provision of a meaningful proportion of Natural Green Space or access to Natural Green Space*". The provision of alternative recreational land is needed to attract new residents away from the protected site and can therefore be considered as a mechanism for avoiding harm.
- 5.6.3 Natural England advises that further work on what a "*meaningful proportion*" of natural greenspace or Suitable Alternative Natural Greenspace (SANG) looks like to act as an effective avoidance measure. This will involve consideration as to whether sufficient 'on site' SANG can be provided within the strategic allocations and whether additional strategic SANGs are required to ensure there is sufficient recreational land provision to draw visitors away from the SAC.
- 5.6.4 In Natural England's view a combination of Strategic Access Management Measures and SANGS are required to address the recreational impacts of residential growth and development. Both of these measures should be included in the final Mitigation Strategy. We will continue to work with Epping Forest District Council, the City of London Conservators, and other LPA's within the 6.2Km Zol to develop the Mitigation Strategy in this regard.
- 5.6.5 With respect to the impacts of air pollution, the December 2017 HRA did not identify any specific avoidance or detailed mitigation measures. We advised in our response to the Regulation 19 Local Plan consultation that we had concerns regarding the modelling methodology and that it was premature to conclude no adverse effect due to the need for further modelling work and information on mitigation measures that were going to be applied. Until this additional work has been provided in the updated HRA it is difficult to know whether the avoidance of harm has been properly considered. One option that could be used as an appropriate avoidance measure would be to model the impacts associated with a reduced number of houses. This is not something which has been

undertaken to date as the approach considered highways improvements and modal shift as the main types of mitigation to minimise any traffic related air pollution impacts.

5.7 For the purpose of any appropriate assessment, is it justified to defer consideration of the implications of allocated sites to the planning application stage, as suggested by Policy DM2? For example, how will any new green spaces required be found and secured if not through the plan-making process (e.g. in a SANG Strategy)

5.7.1 Natural England advises that it is not sufficient to rely on project level appropriate assessments to consider the impacts of allocated sites at the planning application stage where strategic avoidance or mitigation measures are required to address in combination effects. The Local Plan will have recreational and air pollution in-combination impacts which need to be mitigated at the local plan level. The most appropriate solution in such instances is to develop a Mitigation Strategy which sets out the avoidance and mitigation measures up front and as part of the local plan. We have advised in our previous consultation responses to ensure compliance with the Habitats Regulations that the Mitigation Strategy for recreational pressure and air pollution must be in place by the time the plan is adopted. We have also advised that there needs to be a policy commitment stating that the Mitigation Strategy will be in place by the time the plan is adopted (or sooner if at all possible) so there is certainty that the mitigation needed is identified up front, costed and a delivery mechanism identified to ensure the required mitigation measures can be delivered. We have also advised that ideally the final Mitigation Strategy should be adopted as a Supplementary Planning Document, to give the strategy weight in planning decisions.

5.7.2 This approach would not negate the need for project level HRA's to be undertaken to address other issues or impacts which could also have an impact on a European protected site.

5.8 For the purpose of any appropriate assessment, is it justified to rely upon the forthcoming Mitigation Strategy to conclude that the integrity of the relevant sites will not be adversely affected given that the effectiveness of the Strategy cannot yet be fully appreciated?

5.8.1 In Natural England's view, it is acceptable to rely on a forthcoming Mitigation Strategy, provided that there is a commitment in policy to its production and provided the Mitigation Strategy is in place by the time the plan is adopted. Provided this commitment is written into policy, it carries sufficient weight in NE's view to ensure any development coming forward will be compliant with the Habitats Regulations. The existing policy wording needs to be strengthened to address this issue and we have suggested policy wording to Epping Forest District Council on this issue. Similar approaches have also been undertaken and accepted as being effective in other parts of the country e.g. North Northamptonshire Joint Core Strategy committed to preparing a Mitigation Strategy for the Upper Nene Valley Gravel Pits SPA. The Strategy was not in place at the time of the examination but was completed by the time the plan was adopted.

5.8.2 Natural England has also agreed an interim approach with Epping Forest District Council to address recreational impacts. This interim approach includes a costed package of Strategic Access Management (SAM) measures to ensure that any development coming forward ahead of the local plan and Mitigation Strategy will be compliant with the Habitats Regulations. A per dwelling interim tariff has been calculated and in the case of Epping Forest District Council will be applied to all new housing development within the inner 3Km zone of influence. In the interim approach contributions are only being requested from Epping Forest District, London Borough of Waltham Forest and London Borough of Redbridge. The approach being taken by Epping Forest District Council is outlined in Examination Document EB134 "Interim

Approach to Managing Recreational Pressures on the Epping Forest Special Area of Conservation.”

- 5.8.3 Natural England and Epping Forest District Council are also working closely with the London Boroughs of Waltham Forest and Redbridge to ensure any residential planning applications falling within the identified zones of influence coming forward during this interim period will contribute towards the costed SAM measures, and for larger developments to contribute towards greenspace provision where appropriate. Natural England regards the interim period to be the period until the Local Plan is adopted and the full Mitigation Strategy is agreed.
- 5.8.4 There is not currently an interim approach agreed for addressing air pollution impacts (see our letter dated 29th March attached) as from Natural England’s point of view there is still uncertainty over the scale of the impacts. We have therefore been unable to discount an adverse effect on integrity. It has therefore not been possible to identify suitable mitigation measures in the interim.
- 5.9 What is the scope of the forthcoming Mitigation Strategy and what type of mitigation is envisaged for each type of likely significant effect?**
- 5.9.1 **Air Pollution Impacts** – The December 2017 HRA did not provide a great deal of information on any potential mitigation measures to address air pollution impacts. The only proposals put forward included a) an allowance for a realistic assumption of modal shift (and thus a reduced car demand) and b) potential mitigation to improve capacity at different junctions including to the Wake Arms Roundabout. No detailed air pollution modelling data of the likely improvements these proposals would deliver were provided to Natural England and as such we advised that the proposed mitigation measures were insufficient to enable a conclusion of no likely significant effect to be reached. We understand that the proposal to undertake improvements to the Wake Arms roundabout is no longer being considered as a mitigation measure but it does still appear in the Infrastructure Delivery Plan as an “essential” project to support the growth and development in the plan. We cannot therefore provide any further advice on what the Mitigation Strategy should include until we have received an updated HRA.
- 5.9.2 **Recreational Impacts** – The December 2017 HRA does not provide any detail on the scope of what should be included in the Mitigation Strategy to address recreational impacts. Section 5.39 of the HRA recommends that allocations of more than 400 dwellings or more in the core catchment of the SAC should consider the potential to deliver their own on site accessible natural greenspace. In their view policy DM2 adequately covers this requirement.
- 5.9.3 Natural England provided interim advice in a letter dated 20th September to Epping Forest District Council (as well as to other LPA’s with housing allocations within the 6.2Km Zone of Influence) explaining the type of mitigation that should be applied to residential planning applications to address recreational impacts. We would envisage the Final Mitigation Strategy to include elements of this advice. In summary we advised that:

For larger scale residential developments (100 units or more, or equivalent, as a guide):

- On site Mitigation - well-designed open space/green infrastructure within the development, proportionate to its scale. This can help minimise any predicted increase in recreational pressure to the European sites by containing the majority of recreation within and around the development site boundary. As a minimum, we advise that such provisions should include:
 - An appropriate extent of high-quality, informal, semi-natural areas
 - Circular dog walking routes of >2.7 km¹ within the site and/or with links to

¹ Taken from Jenkinson, S., (2013), *Planning for dog ownership in new developments: reducing conflict – adding value. Access and greenspace design guidance for planners and developers*

- appropriate public rights of way (PRoW) networks
 - Dedicated 'dogs-off-lead' areas
 - Signage/information leaflets to householders to promote these areas for recreation
 - Dog waste bins
 - A commitment to the long term maintenance and management of these provisions
- Off Site Mitigation Measures – Strategic Access Management Measures will also be needed due to the unique draw of Epping Forest. Even well-designed, 'on-site' provisions are unlikely to fully mitigate impacts when all residential development within reach of the forest is considered together 'in combination'. Therefore to address any residual impacts, a financial contribution should also be applied to developers to fund Strategic Access Management Measures in and around Epping Forest. An interim costed plan identifying Strategic Access Management Measures has been produced by the City of London Conservators of Epping Forest which can be used to calculate the required developer contributions until the final Mitigation Strategy is in place.

For small scale residential development (0-99 houses, or equivalent, as a guide):

- A financial contribution to strategic 'off site' measures only is required as set out in the costed Strategic Access Management Measures provided by the City of London Conservators of Epping Forest (see above)

5.9.4 Further consideration is also required as to whether any additional Strategic Accessible Greenspace provision is required. The Interim Mitigation Strategy produced by Epping Forest District Council identifies the need for the strategic sites of Latton Priory, Water Lane, North Weald Basset and South of Epping Masterplan Area to provide Strategic Natural Greenspace, so further discussion is required to decide whether anything additional is required.

5.9.5 Monitoring will also need to be an element of both the Recreational Mitigation Strategy and the Air Pollution Mitigation Strategy.

5.10 How is this/could this be secured in the Plan? What progress has been made with the Mitigation Strategy and when will it be completed?

5.10.1 There is not currently an agreed timeframe for producing the Mitigation Strategy to address air pollution impacts. This is partly due to the fact that there is still uncertainty as to what these impacts are and what mitigation measures are to be applied. We have advised as above that this needs to be completed by the time the local plan is adopted.

5.10.2 Progress has been made to address the recreational impacts of the local plan as follows:

- An interim costed list of projects has been prepared by the City of London Conservators of Epping Forest which identifies the Strategic Access Management Measures needed to address off site mitigation measures. Measures include, Traffic control and car impact reduction, management of car parks, physical management of paths, SAC Ambassadors, interpretation and signage etc.
 - Epping Forest District Council has used the list of costed projects to calculate a per dwelling developers tariff for residential development which falls within the 6.2Km Zone of Influence.
 - Epping Forest District Council have proposed that such contributions should only be collected from residential developments within the ZOI located within Epping Forest
-

District, London Borough of Waltham Forest and London Borough of Redbridge (This reflects the scale, distribution and frequency of future visitors likely to visit the parts of the SAC and also takes into account the potential costs of preparing Section 106 Obligations and subsequent administration which may cost more than the actual monies being collected).

- We have advised that this Mitigation Strategy needs to be completed and finalised by the time the local plan is adopted. Further work is needed to consider whether Strategic SANGS are required to fully mitigate the recreational impacts.

5.11 Might certain proposals within the Mitigation Strategy itself, such as those for Wake Arms Roundabout, themselves have potentially significant effects upon designated sites which require appropriate assessment? If so, how and when will this be done?

5.11.1 Natural England advised Epping Forest District Council (EFDC) that any physical mitigation proposals requiring land-take within the SAC boundary at Wake Arms roundabout would in itself damage Epping Forest SAC, and as such could not be considered as a mitigation measure. It is not possible to propose a measure as mitigation if that in itself would result in a damaging impact on a European protected site. It is our understanding from discussions with EFDC that this is no longer being considered as a mitigation measure. If it were to be considered as being necessary to support the local plan for other reasons e.g. highway safety or easing traffic flows then this would need to be considered in the HRA for the local plan. This would also apply to other road improvement schemes where there was the potential for impacts on the SAC.

5.12 In the absence of a final Mitigation Strategy at this stage: Is it necessary to modify the Plan to require development proposals to comply with its recommendations? Would this course of action be justified and effective, or is it essential for the Strategy to be completed before the Plan is adopted? Is it clear that the necessary mitigation could be implemented without threatening the delivery of the Plan's strategy?

5.12.1 Natural England will be in a better position to answer this question once we have seen the updated HRA. There is an interim Strategy to address recreational impacts which can be used now to ensure planning applications coming forward ahead of the local plan deliver the required mitigation for recreational impacts. Whilst the details of the Strategy is likely to evolve over time the main principles of having Strategic Access Management Measures and SANG provision is unlikely to change.

5.12.2 There is more uncertainty regarding the Mitigation Strategy for addressing air pollution impacts and therefore there is not currently an interim proposal. We will continue to work with Epping Forest District Council to fully address what in our view is a serious air quality issue in relation to the SAC. The attached letter dated 29th March captures the issues we were concerned about. Natural England needs to see the updated HRA to determine whether these issues have been dealt with sufficiently, in terms of modelling, mitigation and justification for any conclusions reached. Finding a solution for these issues will have implications for the final Mitigation Strategy.

5.12.3 It is Natural England's view that it is necessary for the Mitigation Strategy for air pollution and recreational pressure to be completed by the time the plan is adopted.

5.13 If it would be necessary, justified and effective to address the absence of the Mitigation Strategy through modifications to the Plan, what changes are needed? (In responding, the Council should have full regard to the representations of Natural England [19STAT0027] and the Conservators of Epping Forest [19STAT0035]).

5.13.1 Natural England has advised that the following modifications to the Plan will be required based on the December 2017 HRA to ensure the plan is compliant with the Habitats Regulations and is sound:

- Strengthening of Policy SP4 – Development and Delivery of Garden Communities in Harlow and Gilston Garden Town which commits to protecting the SAC and to providing any required mitigation measures to address any impacts.
- The commitment to the production of a Mitigation Strategy in Policy (DM2) with a commitment to having it finalised by the time the local plan is adopted to ensure that any mitigation or avoidance measures brought about by discussion are deliverable and enforceable
- Policies P1 – P15 may also need to be amended to make reference to any required mitigation measures needed to address recreational and air pollution impacts
- The inclusion of the 400m zone for addressing urbanisation effects in Policy DM2 requires further consideration.

5.13.2 Additional amendments may be required depending on the conclusions and mitigation measures proposed in the updated HRA in relation to air quality and recreational impacts. Also there may be a requirement to require other allocations to contribute towards mitigation if the summer visitor survey changes the zone of influence.



MATTER 2: Context, Vision & Objectives and Sustainable Development

Issue 1: Are the context, vision and objectives for the Plan accurate and comprehensive?

1.1 Do the vision and objectives adequately reflect the Plan's aims for air quality, green and blue infrastructure, protection of the landscape and biodiversity, and healthy living? Should specific reference be made to the aim of conserving or enhancing the historic environment, including archaeology?

1.1.1 In our regulation 19 response, we advised *that 'it would be appropriate to include improvement of air quality across the district within the vision and objectives and an objective to ensure new development incorporates green infrastructure and protection and enhancement of biodiversity into its design to deliver a net gain.'*

1.1.2 Natural England understands that the council supports the principle of making the amendments suggested. Specific wording has not yet been agreed.

Issue 2: Is Policy SP1 concerning the presumption in favour of sustainable development necessary and consistent with national policy?

1.2 Does Policy SP1 add anything to, or seek to depart in any way, from national policy in paragraphs 11-16 of the NPPF? If not, is this policy necessary? If it is necessary, is it consistent with national policy?

1.2.1 Natural England did not comment specifically on SP1 in our regulation 19 response but in the absence of an updated HRA we advise that the presumption in favour of sustainable development does not apply where development requires an appropriate assessment as per paragraph 119 of the NPPF. Until we have had sight of the updated modelling and HRA the implications of this for policy SP1 are unclear.



MATTER 4: The Spatial Strategy/Distribution of Development

Issue 5: Is the distribution of development justified in respect of the approach to flood risk; and to protecting water quality?

Water Quality and Wastewater Treatment

- 5.4** Is the level of growth and the distribution of development in the Plan justified in the absence of a specific strategic assessment to demonstrate that there is sufficient capacity in the water supply network and waste water treatment network to support it without detriment to the water environment? The Environment Agency has suggested that a Water Cycle Study could have been prepared, but that other evidence, including consultation with relevant service providers, could be sufficient. What is the evidence to demonstrate that the Plan is sound in this regard? Is the Council carrying out the three actions suggested by the Environment Agency in its representations on Policy DM18?
- 5.5** Thames Water has identified that significant infrastructure upgrades will be required to the Abbess Roding Sewage Treatment Works (STW), the Epping STW, the North Weald STW, the Stanford Rivers STW and the Thornwood STW in order to support planned growth. Furthermore, the impact of cumulative development in nearby Council areas upon the Deephams STW and the Rye Meads STW will need to be kept under review. Capacity at the Theydon Bois STW and the Willingdale STW might also need to be reviewed. What work is being undertaken in respect of these matters to ensure that the Plan's allocations are deliverable at the appropriate time?
- 5.5.1** Natural England's comments at regulation 19 relating to policy D3 remain relevant to these two questions. Natural England understands that further information relating to waste water capacity at Rye Meads Sewerage Treatment works will be provided in the updated HRA.

Issue 6: Is the distribution of development justified in respect of its effect upon transport and other infrastructure in the District? Will the Plan be effective in securing the infrastructure necessary to support proposed growth?

Transport

- 6.1** Have the transport impacts of the Plan as a whole been tested? Has all necessary mitigation been identified and is there confidence that it can be delivered in time to support the proposed growth? Are there any remaining uncertainties or shortcomings?
- 6.1.1** Natural England advises that air quality impacts on Epping Forest SAC and physical changes to the highway network within the forest to accommodate new traffic should be considered key risks posed by Epping Forest District Local Plan from an ecological perspective. Note our comments relating to matter 1: issue 5 above.
- 6.1.2** Not having received an up-to-date HRA, which we are informed will contain further details relating to traffic modelling and air quality, we cannot advise on whether necessary mitigation has been identified. At this time significant uncertainty remains and the submitted HRA contains significant shortcomings as identified in our regulation 19 response.

- 6.1.3 In addition we note that the submitted Infrastructure Delivery Plan and schedule (document reference EB1100, EB1101A and EB1101B) are unchanged and still regard improvements at Wake Arms roundabout to be essential. The more recent Infrastructure Delivery Topic Paper (date October 2018) also makes reference to improvements to junctions within the forest including Wake Arms roundabout.
- 6.1.4 Natural England understands that these proposed improvements are no longer being put forward through the local plan. Supporting documentation therefore needs to be updated to reflect this or detailed proposals and full consideration through HRA processes should be presented in support of the local plan. Natural England has not officially been afforded the opportunity to comment on the viability or impact of any proposed scheme.
- 6.2 Is planned growth dependent upon a “step-change” towards sustainable travel? What does this mean and how will the Plan facilitate it? What has been done to assess the need for increased public transport and how will this be provided? How will success be monitored?**
- 6.2.1 Natural England recognises and supports any proposal to move towards more sustainable travel. Note, however, that we do not consider the “step change” to have sufficient certainty to satisfy the requirements of the Habitat Regulations and cannot therefore be regarded as mitigation.

Other Infrastructure

- 6.5 Does the Infrastructure Delivery Plan and Schedule (EB1101A & B) demonstrate that the development in the Plan can be served by adequate infrastructure at the appropriate time? Are there any significant omissions or funding gaps?**
- 6.5.1 Please note our comments above relating to SANGs and green and blue infrastructure above. In particular those relating to matter 1: issue 5.

Aidan Lonergan
Area Manager
West Anglia Team

Date: 29 March 2018
Our ref: 234430 Epping Forest LP Pre-sub
Your ref: 242877



Epping Forest District Council,
David Coleman
Planning Policy Team
Neighbourhoods Directorate
Civic Offices, 323 High Street,
Epping, Essex CM16 4BZ

Customer
Services
Hornbeam
House
Crewe
Business Park
Electra Way
Crewe
Cheshire
CW1 6GJ

By email only: David Coleman (dcoleman@eppingforestdc.gov.uk)
CC: Nicky Linihan (nicky@fortismere-associates.co.uk)
Alison Blom-Cooper (ablomcooper@eppingforestdc.gov.uk)

T 0300 060
3900

Dear David

Epping Forest District Local Plan Submission Version 2017 - Further Advice on the Habitats Regulations Assessment

Further to the really helpful and positive meeting we had with you and your colleagues on 21 February 2018, please find attached some updated advice with respect to the Habitats Regulations Assessment for the Epping Forest District Local Plan.

We very much welcome the fact that the HRA is being amended to include updated traffic and air pollution modelling and to address potential mitigation measures. We have therefore provided this advice to help scope out what should be included in the updated Appropriate Assessment stage of the HRA and also addresses some of the concerns we have raised in our previous correspondence, particularly around the traffic and air pollution modelling. We are committed to continue to work closely with you on the HRA and the Mitigation Strategy through the various MoU Steering groups and working groups.

1. Generic Advice on the Scope of the Appropriate Assessment

1.1 In summary the AA stage of the HRA must:

(a) Undertake an adequately detailed assessment of the effects of the Local Plan (alone and in combination with other plans and projects) on the SAC features, and

(b) Clearly demonstrate the Plan can avoid an adverse effect on the integrity of the SAC.

1.2 In order to come to a conclusion with respect to whether there will be an adverse effect on site integrity it may be helpful to use a simple, pragmatic checklist. This can be helpful to identify if there is a potential mechanism through which an adverse effect on integrity may occur. If the answer to all of these questions is "Yes" then it may be reasonable to conclude that there is not an adverse effect on integrity. If the answer is 'No' to one or more of the questions then it cannot be concluded that there will be no adverse effect on integrity. Following a judgement of

Likely Significant Effect, in view of the site's conservation objectives can the appropriate assessment show that:

Q1. The area of Annex I habitats (or composite features) will not be reduced by the Plan either alone and/or in combination with other plans/projects?

Q2. There will be no direct adverse effects by the Plan (either alone and/or in combination with other plans/projects) on the population of the Annex II species, or birds for which the site was designated or classified either alone and/or in combination?

Q3. There will be no indirect adverse effects by the Plan (either alone and/or in combination with other plans/projects) on the populations of Annex II species for which the site was designated due to loss or degradation of their habitat (quantity/ quality)?

Q4. There will be no changes by the Plan (either alone and/or in combination with other plans/projects) to the composition of the habitats for which the site was designated (e.g. reduction in species structure, abundance or diversity that comprises the habitat over time)?

Q5. The Plan (either alone and/or in combination with other plans/projects) will not interrupt or degrade the physical, chemical or biological processes that support habitats and species for which the site was designated or classified?

The following key site-specific factors should be considered when formulating answers to the checklist above in individual cases.

- 1) Scale of impact;
- 2) Duration of impact and recovery/reversibility;
- 3) Long term impacts, biological-lag and sustainability;
- 4) Dynamic systems;
- 5) Conflicting feature requirements;
- 6) Off-site impacts;
- 7) Uncertainty with cause and effect and a precautionary approach.

2. Recreational Pressure

We advise that the HRA needs to reflect the findings of the recent visitor survey which has been completed by Footprint Ecology. We would be happy to discuss with you the zone of influence before it is formally included in the HRA.

3. Traffic and Air Pollution Modelling

3.1 Natural England requires the HRA to undertake an assessment of the respective Local Plan 'alone' and 'in combination' with other relevant plans and projects. The list of relevant 'in combination' Local Plans include the other HMA authorities and other Local Plans of authorities that are near to the SAC and the identified key roads. This includes a complete list as follows:

a) Other HMA – To include Harlow DC, East Herts DC, Uttlesford DC &

b) Non-HMA) – To include LB Redbridge, LBWF, LB Hackney, LB Newham, LB Enfield, LB Haringey and Broxbourne. In addition to this the London Plan should be considered 'in combination' accounting for housing growth proposals over the Local Plan timeframe.

3.2 To assess the scale of effect of changes in air quality linked to the Local Plan 'alone' and 'in combination' the HRA needs to predict the scale of change in transport movements

(expressed in AADT) against an environmental baseline and appropriate timelines within the Local Plan 'alone' and 'in combination' with other plans and projects.

- 3.3 The chosen environmental baseline for the Epping Forest District Local Plan appears to be 2014, presumably because this was the best traffic flow data available at the time of Local Plan HRA submission. We note that by using this baseline pre 2014 housing will be included and hence the environmental baseline for traffic flow may be higher than expected. This is important as the plan start date is 2011, therefore some housing that could be considered as part of the local plan contribution (through allocation or windfall) will actually be recorded in the environmental baseline. The environmental baseline for traffic modelling should aim to represent a situation prior to the outputs of the Epping Local Plan or any 'in combination' plans.
- 3.4 The Table on page 118 provides the southbound & northbound traffic flow for each Option per road and when these figures are added they provide the two-way traffic flow for each Option per road. This two-way flow figure for each Option per road is compared with the 2033 Do Minimum figures for each road and the change in AADT is shown in the Table on page 119. The conclusions about traffic growth within the HRA are therefore based on the change figures set out in the Table on page 119. Natural England questions the appropriateness of the Do Minimum figures to serve as an appropriate baseline to make judgments about the scale of change for an 'alone' and 'in combination' HRA assessment (see point 3.5 below). Regardless, the figures for many of the Options, notably on the B1393, A104 and A121 exceed the threshold of an increase in AADT >1,000, so need to be regarded as unable to rule out Likely Significant Effect requiring a more detailed Appropriate Assessment. It could be argued that the requested further dataset runs is necessary as part of this Appropriate Assessment.
- 3.5 The text on page 117 defines the Do Minimum as the change in flows due to (a) delivery of existing planning permissions in the HMA and (b) general background traffic growth as a result of population growth expected to 2033 without any of the Local Plan relevant HMA Options. In Habitats Regulations terms, the Do Minimum situation (and related traffic flow figures) cannot be regarded as the appropriate reference baseline to calculate the traffic flow change attributable to the Local Plan 'alone' accounting for (a) and (b) above. Addressing (a) first - ideally the baseline should be set at a traffic flow level before these permitted developments have been built (see 3.3 above) and, for (b) - based on our understanding of the TEMPRo model datasets the general background traffic growth includes Local Plan-led housing growth from relevant Local Plans that need to be considered as part of 'in combination' HRA. On this basis, Natural England does not regard the Do Minimum figures as providing relevant traffic flow baseline data. Our thoughts about how to address this are set out in point 3.6 below.
- 3.6 The dwelling numbers for each year from 2014 to 2033 within the TEMPRo model need to be clearly set out for each relevant Local Planning Authority listed and for the London Plan Area. These need to be compared with the approved or submitted Local Plan dwelling numbers for the relevant periods with adjustments made accordingly to update the dataset for a re-run for all of the Options per road. The re-run will present an 'in combination' traffic-flow figure for predicted housing figures associated with all the relevant Local Plans and all other TEMPRo model assumptions remaining as previous. Whilst the caveat around point 3 exists, the 2014 baseline traffic flow data can be used to provide an appropriate reference baseline to compare these 'in combination' figures.
- 3.7 For an assessment of the scale of effect of the Local Plan on traffic flows 'alone', the dwelling numbers within the TEMPRo dataset needs to remain at the actual 2014 dwelling numbers for all authorities (i.e. no residential growth) for the years between 2014 – 2033, apart from the proposed growth in dwelling numbers within EFDC, increasing as proposed between 2014 – 2033 in accordance with the EFDC Local Plan. Using this dataset the TEMPRo model can be re-run for these relevant Local Plan years.

- 3.8 For an assessment of the scale of effect of the EFDC Local Plan on traffic flows 'in combination' with the other HMA authorities only, the dwelling numbers within the TEMPRo dataset needs to remain at the actual 2014 dwelling numbers for all non-HMA authorities (i.e. no residential growth) for the relevant span of years between i.e., 2014 – 2033, apart from the proposed growth in dwelling numbers within the four HMA authorities, increasing as proposed between 2014 – 2033 in accordance with the HMA Local Plans. Using this dataset the TEMPRo model can be re-run for these relevant Local Plan years.
- 3.9 Once the appropriate traffic flow data has been provided for each option per road, the Air Quality Assessments can be undertaken using these figures to calculate the scale of change in AQ for each year between 2014 – 2033 that is attributable to: (i) EFDC Local Plan 'Alone', (ii) EFDC Local Plan 'in combination' with other HMA authorities only, without Local Plan-led residential growth in relevant non-HMA authorities (iii) EFDC Local Plan 'in combination' with other HMA and relevant non-HMA authorities. The AQ Baseline will need to be calculated using 2014 traffic flow data and calibrated with any local AQ information available. For comparison, the baseline needs to be modelled for the situation with no increases in current traffic for the years between 2014 and 2033. This will show the predicted scale of AQ change attributable to technology and fuel improvements.
- 3.10 The full datasets for traffic flows and air quality showing annual predictions between 2014 – 2033 should be provided in the HRA Annex and Summary Tables within the HRA showing the workings to indicate the scale of annual changes over time (when compared with the environmental baseline) and distances from the road for the different Options per Road when considered 'alone' and the two 'in combination' situations. When assessing the impact on SAC features, Natural England advise that these features (e.g. veteran trees) may be found within 5 metres of the roadside.

4. Mitigation Measures to Address Air Pollution Impacts

- 4.1 The HRA must make it clear which mitigation measures are being considered to avoid any adverse effects on integrity. The effectiveness of any mitigation measures on air pollution will also need to be included in the HRA e.g. any proposals to improve traffic flows at the Wake Arms Roundabout.

5. Monitoring

- 5.1 Monitoring is not acceptable as a form of mitigation to overcome uncertainty when carrying out the integrity test (Tyldesley & Hoskin, 2008). Where a project proponent suggests a monitoring package with the aim of finding out more about possible effects as a way of mitigating those effects, this would not be acceptable. Monitoring may only be considered in the Habitats Regulations Assessment very rarely. There are two exceptional situations where monitoring may form part of or be added to a plan or project at assessment as follows:
- a) **Early warning monitoring** - Where there is a high degree of certainty as to the impacts on the site so that no adverse effect can be concluded. Monitoring could provide early warning of any adverse effects;
 - b) **Validation monitoring** - a monitoring package could be put in place to validate predicted effects, but only where the project had passed through the tests in regulations 62 & 66 and it had been decided that it must proceed for Imperative Reasons of Over-riding Public Interest (IROPI) and there are no alternative solutions. In this situation, the monitoring is to improve the evidence base so as to inform any future possible consents where the project has completely passed through all the tests.

Natural England will continue to offer support through the MoU and as a statutory consultee on the HRA. Please do get in touch should you wish to discuss any aspects of this advice and we look forward to meeting with you again on 23 May 2018. However, if you wish to discuss any aspects of this advice then please do not hesitate to contact us.

Yours sincerely,

Aidan Lonergan
Area Manager - West Anglia Team