

**EPPING FOREST DISTRICT COUNCIL  
EXAMINATION OF THE DISTRICT LOCAL PLAN, 2011-2033**

**MATTER 1: LEGAL COMPLIANCE**

**PRE-HEARING STATEMENT ON BEHALF OF  
EPPING FOREST DISTRICT COUNCIL**

**JANUARY 2019**

## **INTRODUCTION**

Epping Forest District Council ("the Council") submits this statement in response to the Inspector's Matters, Issues and Questions ("MIQs") (ED5). This statement addresses Matter 1: Legal Compliance and provides the Council's response to all of the Inspector's questions associated with Issues 1 to 7 (ED5, pp 1-5).

This statement has been prepared with the assistance of ORS (Issue 3); AECOM (Issues 4 and 5).

Where appropriate, the Council's responses in this statement refer to but do not repeat detailed responses within the hearing statements submitted by the Council concerning other Matters.

Key documents informing the preparation of this statement to which the Council may refer at the hearing sessions include:

- [EB101 Local Development Scheme \(EB101\) and EB101A update \(2017 and 2018\)](#);
- [EB104 Statement of Community Involvement \(2013\)](#);
- [EB127 Approved Judgment – R \(CK Properties \(Theydon Bois\) Ltd v Epping Forest District Council EWHC 1649 \(Admin\) \(2018\)](#);
- [EB119 Duty to Cooperate Statement \(\(EB119\) December 2017\)](#);
- [EB407 Strategic Housing Market Assessment \(2017\)](#);
- [EB1202 Memorandum of Understanding on Distribution of Objectively Assessed Housing Need \(2017\): \(EB1202\)](#);
- [EB204 Sustainability Appraisal Report \(2017\) and EB204A non-technical summary \(2017\)](#);
- [EB209 Habitats Regulation Assessment \(2019\); and](#)
- [EB1604 Climate Change Background Paper \(EB1604\) 2016](#)

All documents referred to in this statement are listed in Appendix A of this statement together with links to the relevant document included within the Examination Library.

Examination Library document references are used throughout for consistency and convenience.

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

**Inspector's Question 1**

**National Policy and Advice**

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

1. No, it is not necessary to highlight any significant inconsistencies with national policy or guidance. In accordance with best practice, before submission the Council reviewed the soundness of the Local Plan Submission Version 2017 ("LPSV"), including its consistency with national planning policy. The results of that review are recorded in the Epping Forest District Local Plan Soundness Self Assessment Checklist (EB126) – see in particular page 49.

**Inspector's Question 2**

**Neighbourhood Plans (NPs)**

**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?**

2. There are no "made" Neighbourhood Plans in the District. However, as noted at paragraph 2.33 of the LPSV, in preparing the Plan, the Council has taken account of the preparatory work being undertaken by a number of parish councils within the District, including the priorities and aspirations of emerging Neighbourhood Plans, which the Council has sought to reflect in the Plan.

**Inspector's Question 3**

**Neighbourhood Plans (NPs)**

**3. Is it clear which of the Plan's policies constitute "strategic policies" for the purpose of NP preparation and examination? Should this be set out in Policy D6 or otherwise clarified?**

3. The Council agrees that the Plan could be clearer in this regard. The strategic policies identified for the purpose of Neighbourhood Plan preparation and examination are those with:
- (a) Chapter 2 'Strategic Policies' with the prefix 'SP';
  - (b) Chapter 3 'Housing, Employment and Transport' with the prefix 'H', 'E' or 'T';
  - (c) Chapter 5 'Places' with the prefix 'P'
  - (d) Chapter 6 'Infrastructure and Delivery' Policies 'D 1 to D 5'.
4. If the Inspector considers it necessary and/or helpful, for clarity, the "strategic policies" could be identified in the Plan by adding the text set out in paragraph 3 (above) to the end of paragraph 1.12 of the Plan, and by making reference to this in paragraph 6.47 of the supporting text to Policy D 6 Neighbourhood Planning. Including this information within Policy D 6 is not necessary to make the LPSV sound or legally compliant.

***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?***

**Inspector's Question 1**

- 1. Has the Plan been prepared in accordance with the adopted LDS, October 2017?**

***Response to Question 1***

5. The LPSV has been prepared in accordance with the Epping Forest District Local Development Scheme, adopted on October 2017 ("the LDS") (EB101)
6. The adopted LDS reflected the Council's intended timetable to submit the Plan in March 2018 providing indicative dates for Examination and Adoption. When preparing the Plan, the Council complied with the LDS at every stage and, as necessary, updated the LDS to reflect changes to plan-making circumstances in the District.
7. In accordance with the adopted LDS, the Council was ready to submit the LPSV in March 2018, as timetabled. However, submission of the Plan was delayed due the judicial review claim issued by CK Properties (Theydon Bois) Ltd on 9 March 2018 and the interim injunction granted by the High Court on March 2018, which restrained the Council from submitting the LPSV pending the resolution of those legal proceedings. In the event, following a hearing over two days in May 2018, the High Court dismissed the judicial review claim on 29 June 2018 and refused the unsuccessful Claimant's application for permission to appeal to the Court of Appeal on 13 July 2018. The Claimant's renewed application to the Court of Appeal for permission to appeal was refused by Sales, LJ on 20 September 2018. The Council submitted the LPSV and support documents on 21 September 2018.
8. Following submission, at the 21 November 2018 meeting of the Council's Local Plans Cabinet Committee, the Council approved an updated version of the LDS for adoption (EB101A). The latest adopted version of the Council's LDS supersedes the LDS adopted on 8 October 2017 and reflects the latest timetable for the submission and independent examination of the Local Plan.

**Inspector's Question 2**

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

**Response to Question 2**

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

9. The Council confirms that LPSV has been prepared in accordance with the adopted Statement of Community Involvement ("SCI") (EB104). The Council has complied with the commitment in the adopted SCI to pursue a range of consultation techniques including information leaflets, commuter postcards, stakeholder workshops, public exhibitions (both staffed and static) and through the dedicated Local Plan website, created to raise awareness of the Local Plan and connect with residents.
10. At paragraph [79] of his judgment in *R (CK Properties (Theydon Bois) Ltd) v Epping Forest DC* [2018] EWHC 1694 (Admin) (EB127), Supperstone, J found to have complied with its SCI (EB127).
11. In advance of the Regulation 18 Draft Local Plan consultation, on 1 September 2016, a Consultation Strategy was approved by the Council's Cabinet, which set out an approach aimed at successfully engaging residents (EB111). The details of how the Council has engaged with local residents is set out in the Regulation 22 Consultation Statement (EB115) for all stages of the Plan. In particular for residents likely to be affected by proposed site allocations, a letter was sent out to every household in the District notifying them of the Local Plan consultation and staffed exhibitions were held in the six main settlements in Epping Forest District which provided a platform for residents to understand what sites were proposed in the Plan.

- b. Was the Regulation 19 version of the Plan adequately publicised compared to previous draft versions? Representations indicate that there were no newspaper articles, fliers, public meetings etc.

12. The LPSV was publicised in a manner that satisfied the legislative requirements relating to Regulation 19 publication. For the reasons explained below, the Council respectfully submits that this question is based on an erroneous and potentially unlawful premise.

13. Having regard to the statutory purpose of independent examination, as defined in part by section 20(5)(a) of the Planning and Compulsory Purchase Act 2004 (as amended) ("the 2004 Act"), the relevant legislative requirements which the LPSV must satisfy are to be found in:
  - (a) Section 19(3) of the 2004 Act (Compliance with the SCI); and
  - (b) Regulation 19 of the 2012 Regulations <sup>1</sup> (Publication).
14. The LPSV was adequately publicised if the Regulation 19 publication process complied with relevant commitments within the adopted SCI and the procedural requirements specified in Regulation 19 of the 2012 regulations. When determining whether the LPSV satisfies the requirements specified in section 20(5)(a) of the 2004 Act, the Inspector must consider only relevant considerations and must ignore considerations that are irrelevant.
15. Compliance with the adopted SCI does not require the Council to publicise a Regulation 19 plan in a manner that accords with previous draft versions. As a matter of law, this question takes account of matters that are irrelevant to the examination of the Plan, which must be carried out lawfully.
16. Accordingly, the Inspector must determine whether the Council publicised the LPSV in accordance with relevant commitments within the SCI and the procedural requirements specified in Regulation 19. When considering whether it would be reasonable to conclude that the LPSV satisfies these two statutory requirements, the Inspector may not lawfully take account of the considerations addressed in this question.
17. In any event, the purpose of Regulation 19 publication was explained by the High Court in the **CK Properties** case (EB127), at paragraph [85]:

*"Regulation 18 concerns the preparation of local plans and the requirement relating to consultation. Regulations 19 and 20 (and also 22 and 23) are relevant to the examination stage of plan-making. I agree with Mr Beard that regulation 19 publication is not a consultation exercise. It is the mechanism by which interested persons are provided with an opportunity to make representations on the draft plan under regulation 20 to enable them to participate in the process of independent examination. In the present case the Claimant has made regulation 20 representations, challenging the soundness and legal compliance of the draft plan that will be considered by the Inspector appointed to examine the local plan. Accordingly the unavailability of Appendix B will not cause any prejudice to the Claimant."*
18. As the purpose of Regulation 19 is served by making Regulation 20 representations, observations about any differences between the manner in

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<sup>1</sup> Town and Country Planning (Local Planning)(England) Regulations 2012 (as amended)

which the Council publicised earlier consultation drafts of the Plan and the LPSV at the Regulation 19 publication stage are irrelevant, as the Local Plan Inspector must have regard to those observations in any event. That does not mean, however, that those observations are relevant to legal compliance under section 20(50)(a) of the 2004 Act. For the reasons set out above, they are not.

**c. Was the online version of the Regulation 19 Plan user-friendly? Did difficulties with document access unreasonably shorten the consultation period?**

19. Yes - The Regulation 19 Plan was clearly signposted on the Local Plan website. The document was available to view or download as a pdf. The website was accessible and clearly signposted from the Epping Forest District Council main website for the entire Regulation 19 publication period and both before and after that period. As noted on page iv of the LPSV, the Council was/is able to make available the Plan in large print or another language upon request.

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

20. Yes. The Council considered the timing of the Regulation 19 publication very carefully and the full reasoning for the agreed timetable is set out in the Report to Cabinet on 12 October 2017 (EB105) and the Report to Council for the Extraordinary meeting on 14 December 2017 (EB114). In anticipation of the overlap with the Christmas holidays, the Council wrote to all respondents on the consultee database on 6 December 2017 notifying them of the upcoming Extraordinary meeting of the Council, and that the Regulation 19 publication stage would commence on the 18 December 2017 subject to the Council's decision at the meeting. The Council gave as much notice as possible to residents given the timing of the publication period.

**e. Were hard copy versions of the Plan available at reasonable cost (£20)?**

21. Hard copies of the Plan were available to buy on request. The Local Plan with Appendices 1-5 costs £10, with Appendix 6 available to buy separately at the same cost of £10. The entire Local Plan document (including Appendix 6) was £20.



- 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?**

22. At paragraph [79] of his judgment in the *CK Properties* case (EB127), Supperstone, J found that the Council had complied with the requirements of the SCI, which required supporting studies to be made available "when finalised". The proper interpretation of the commitments within the SCI is a question of law, ultimately for the courts. In the circumstances, the Inspector may not lawfully come to a different view on the interpretation of the SCI. The Council published Appendix B when it was finalised in March 2018. There are no implications for the test of legal compliance.

**Inspector's Question 3**

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:**

***Response to Question***

- a. **How have the consultation responses made during the preparation of the Plan informed the submitted version, particularly in relation to the desire to protect open spaces and community facilities, and to increase local job and business growth?**

23. The Council took a rigorous approach to the processing and analysis of responses received during the preparation of the Plan. At each stage of consultation, the responses were reviewed and analysed with the Council's findings published on the website and reported to Members. Following the Regulation 18 consultation, the Council produced a Consultation Report (EB122) that gave a summary of all the representations received. An internal review and analysis of all the representations was undertaken to identify the issues raised. This was then used to support the commissioning of further work and re-drafting of policy for the LPSV. Further evidence base work was commissioned relating

to the key issues that had been raised in previous consultations, including the Open Space Study (EB703), Built Facilities Strategy (EB713), Playing Pitch Strategy (EB714), Employment Land Supply Assessment (EB602) and Employment Review (EB603). All findings from the updated evidence base were incorporated in the drafting of the LPSV. The responses from consultation were also tabled in workshops that identified the sites for allocation in the LPSV, as set out in paragraph 2.130 of the Site Selection Report (EB805). Therefore, the Council has ensured that the consultation responses received during the preparation of the Plan have informed the LPSV.

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

24. No - The Council allowed all interested parties to submit sites for consideration during the preparation of the Local Plan for as long as possible, up until March 2017 as set out in Section 2.4.2 of the Site Selection Report (EB805). While 29 sites in total differed from the site allocations included in the Draft Local Plan in 2016, only 17 of these were new sites – the remainder were existing sites where the boundaries had changed or where sites had been merged. The Regulation 19 publication of the LPSV allowed all parties the opportunity for meaningful engagement on the 17 new sites, as representations could be made on the Plan that could be considered by the Inspector at Examination.

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

25. When reporting on the comments received on the Draft Local Plan at Regulation 18, the Council included a summary of the key issues raised and the Council's position in relation to each of these including the work that was to be undertaken to define any changes needed to the Plan. This document was Appendix A to the 11 July 2017 Cabinet report (EB106). The Council then focused on raising awareness of the Regulation 19 publication of the LPSV to ensure that all parties would be able to view the updated Plan and the changes that had been made. The methods used by the Council to publicise the Regulation 19 publication are set out in the Consultation Statement (EB115) in Section 4. For sites, the Site Selection Report (EB805) covered in detail the process and outcome of the site selection process that led to the final allocations in the LPSV.

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

**Inspector's Question 1**

- 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 2017 (EB119). as the Duty to Cooperate been met in respect of these matters and are there any significant omissions?**

***Response to Question 1***

26. The Council considers that the Duty to Co-operate has been met in respect of all the matters set out in Section 3 of EB119 and there are no significant omissions. The terms of reference for the Cooperation for Sustainable Development Board were reviewed and updated in September 2018 (EB1232A).

**Inspector's Question 2**

- 2. In respect of the Harlow and Gilston Garden Town, how have the Member and Officer Boards cooperated on matters such as transport, infrastructure and service provision, including education, to ensure that the Duty is met?**

***Response to Question 2***

27. Governance arrangements were first agreed on 31 July 2017 (EB1302) with the setting up of the Harlow and Gilston Garden Town Member Board (" the Member Board") and Garden Town Officer Group ("the Officer Group"). Following a refresh of the Board's Governance Arrangements new terms of reference were agreed on 23 July 2018 (EB1336). The Officer Group and the Member Board meets monthly and bimonthly, respectively. In November 2018, Guy Nicholson was appointed as the independent Chair of the Member Board.
28. At its meeting on 22 January 2018 (EB1330) the Member Board agreed the budget to be spent on joint projects including the Sustainable Transport Corridor Study; Air Quality Monitoring for the Epping Forest SAC; Strategic Transport modelling; and Water Cycle Study. A Vision for the Garden Town and Design Charter had previously been commissioned. Since then, further joint studies have been commissioned and a number of workstreams have been established to take

forward the joint work for the Garden Town. Officers from each of the five respective Garden Town local authorities (Epping Forest District Council, Harlow District Council, East Herts District Council, Essex County Council and Herts County Council) contribute to each workstream which ensures that a collaborative approach is taken. Workstreams include a delivery workstream, a sustainable travel workstream and an infrastructure workstream. The infrastructure workstream has commissioned a joint Infrastructure Delivery Plan (IDP) and Strategic Viability Assessment for the Garden Town. The IDP is due to be completed shortly and will provide a comprehensive schedule of infrastructure requirements including:

- (a) Transport Works, Services and Travel Planning for Active (Walking and Cycling), Sustainable (Public Transport) and Highways works to support the Garden Town target that 60% of all journeys within the new Garden Communities will be undertaken by active and sustainable modes and support a shift across the Garden Town to a 50% mode share;
- (b) Early Years, Primary, Secondary Education and Special Education Needs including new and expanded school provision;
- (c) Health Care & Emergency Services facilities and initiatives;
- (d) Community Facilities;
- (e) Open Space, Sports and Leisure provision;
- (f) Utilities and Waste facilities;
- (g) Stewardship of facilities and open space.

29. The joint IDP will include consideration for the apportionment of costs of these requirements between the new garden community sites and will be the subject of viability testing. The joint IDP is expected to form a key basis for determining contributions and works to mitigate the impact of the proposed growth.

**Inspector's Question 3**

**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?**

***Response to Question 3***

30. The decision not to meet the full Objectively Assessed Need (OAN) for housing in the Housing Market Area (HMA), as identified by the SHMA 2017 (EB407) does

not represent a failure of the Duty to Co-operate. Please also see the response set out in Matter 3 Issue 1.

31. Planning Practice Guidance (PPG) recognises that "There is no one methodological approach or use of a particular dataset(s) that will provide a definitive assessment of development need" [ID: 2a-005]; and that "Establishing future need for housing is not an exact science. No single approach will provide a definitive answer" [ID 2a-014]. On this basis, it would be inappropriate to treat the OAN identified by any SHMA as a precise number, but instead the evidence should be considered in the context of the scale of housing likely to be needed in the HMA over the plan period.
32. The SHMA 2015 (EB405) originally identified a need for 46,100 dwellings over the 22-year period 2011-2033. The interim demographic update (EB406) updating the overall Housing Need prepared in August 2016 identified that the need could be as high as 54,600 dwellings over the same period. On this basis, the local authorities comprising the HMA considered housing need based on a broad range when establishing the housing requirement, and the Sustainability Appraisal (SA) (EB204) tested scenarios with delivery of up to approximately 57,400 new homes.
33. Based on all of the evidence, a housing requirement figure of 51,100 dwellings was established for the HMA over the 22-year period 2011-2033. This took account of the likely scale of housing need and also the development constraints considered through the SA process. The Memorandum of Understanding (MoU) (EB1200) was agreed in March 2017 on this basis. The MoU predated the SHMA 2017 (EB407), which was published in July 2017 as part of the evidence base for the East Herts District Plan Examination.
34. The SHMA 2017 identified an OAN of 51,700 dwellings. This is within the range of 46,100 dwellings to 54,600 dwellings that had previously been considered, and lower than the 57,400 dwellings tested through the SA process. The figure is only 1.2% higher than the housing requirement agreed through the MoU; and the difference represents only 600 dwellings over the 22-year plan period, equivalent to a total of 27 dpa across the four local authorities that comprise the HMA. The latest OAN does not represent a meaningful change in the housing need identified for the HMA.
35. Furthermore, although the MoU agreed a housing requirement of around 51,100 dwellings for the HMA, some individual Local Plans could include higher numbers. To date, only the East Herts District Plan has been adopted. The housing requirement in the East Herts District Plan (agreed through the MoU) was 18,000 dwellings, whereas their adopted Local Plan provides for 18,458 homes (para 3.2.4). These additional 458 dwellings represent over three quarters (76.3%) of the 600 dwelling unmet need for the entire HMA.
36. Given the overall context, and in particular that the PPG clearly recognises that any OAN should not be treated as a definitive figure, it is entirely reasonable that Epping Forest District Council and the other local authorities decided that it was

not necessary to revise the housing requirement figure agreed in March 2017. Based on the negligible scale of the potential unmet need (a total difference of 27 dpa between the agreed housing requirement and the latest OAN evidence for the entire HMA), it would have been disproportionate for the authorities to engage in Duty to Co-operate discussions with their neighbouring authorities.

37. As set out in the Duty to Co-operate Compliance Statement (EB119), the Council has undertaken joint work on housing need since 2008. The Strategic Housing Market Assessments have shown that the West Essex/East Herts HMA best reflects the relationship between where people live and work in the area. The latest SHMA was published in July 2017 (EB407) and concluded that the housing need across all four authority areas was 51,700 homes whereas the MoU agreed in March 2017 (EB1200) provides for an overall need of 51,100 across the Strategic Housing Market Area and commits each authority to meeting their individual housing needs within their own administrative boundaries. The preparation of the MoU followed the completion of joint work undertaken for the SHMA authorities which assessed the sustainability of strategic spatial options (EB1500) for meeting the overall objectively assessed need within the HMA. In undertaking this work the local authorities considered the potential to increase the level of housing to be delivered across the Housing Market Area but the level of infrastructure constraints, as well as environmental and policy designations the maximum quantum of growth for the plan period is around 51,000 homes for the Housing Market Area. The officer group supporting the Member Board agreed that in view of the small difference in homes between the updated SHMA and the agreement set out in the MoU that it was not necessary to update and it was on this basis that the East Herts District Plan was examined.
38. The MoU identifies the housing requirement for the District is 11,400 and the Plan provides in excess of this requirement.

**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?**

**Inspector's Question 1**

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?

**Response to Question 1**

39. The Sustainability Appraisal (SA) has been carried out iteratively during the plan-making process and influenced the preparation of the Local Plan. As such, the SA is comprehensive and satisfactory. In accordance with the Environmental Assessment of Plans and Programmes Regulations 2004 (as amended) ("the SEA Regulations") and extant PPG the SA has evaluated reasonable alternatives sufficiently. SA Reports have been produced at key stages during the preparation of the Plan, including:
- (a) A Scoping Report in 2010 (EB200);
  - (b) Interim Reports published in 2012 (EB201) and 2016 (EB202);
  - (c) An appraisal of Strategic Spatial Options for delivering housing across the wider Housing Market Area in 2016 (EB203); and
  - (d) An SA Report (incorporating Equalities Impact Assessment) (EB204) published alongside the LPSV in December 2017;
40. In addition, Non-Technical Summary documents were produced in 2016 (EB202A) and 2017 (EB204A).
41. The SA Report (EB204) and NTS (EB204A) submitted with the LPSV identifies, describes and evaluates the likely significant effects of implementing the plan, and reasonable alternatives. Further details of the approach to identifying, describing and evaluating reasonable alternatives undertaken since 2012 is outlined in Part 1 of the SA Report (EB204). Appendix I of the SA Report (EB204), includes a 'checklist' of how (through the SA process) and where (within the report) the regulatory requirements have been, are and will be met (Table C, page 83-84).
42. As set out in Paragraph 5.9 of the SA Report (2017) (EB204), the responses to the Community Choices Consultation (2012), along with available evidence,

determined that a number of alternatives for the distribution of growth around the District were not reasonable. These options included the delivery of a new settlement in the countryside, concentrating growth in one existing settlement and focusing growth at the rural settlements.

43. The rationale for this decision is set out in Paragraph 5.9 of the SA Report (2017) (EB204), which states that:

"There were no available sites of sufficient size to deliver a new settlement within the countryside; delivering all the growth at one settlement would not meet the needs in the rest of the District and focussing growth in the rural areas with poor access to public transport and services/facilities would not result in sustainable development."

44. Excluding the possibility of a new settlement, the concentration of development in one settlement, or an undue focus on rural areas, the Interim SA Report (2012) (EB201) then identified seven reasonable alternatives for the dispersed distribution of growth around the District. The SA process assessed a varying quantum of growth across different settlements, including exploring both 'proportionate' and 'equal' distribution scenarios ('proportionate' being based on existing populations size and 'equal' referring to a more straightforward division) on the basis of scenarios including focusing development around transport infrastructure, away from the London Underground Central Line, and in and around large settlements.
45. The SA and plan-making process assessed reasonable alternatives for different dispersal patterns. The updated evidence base, and responses from the Issues and Options Consultation in 2016, informed five reasonable District-wide alternatives, including the preferred strategy. These are shown in Table 6.2 of the SA Report (2017) (EB204), and explored a range of different growth options, including higher growth in North Weald Bassett and along the Central Line. Reasons for rejecting more concentrated patterns of growth were still considered valid. Further details are provided in paragraphs 6.52 to 6.56 in the SA (2017) (EB204).
46. The reasonable alternatives were further refined in 2017. At that stage, it was not considered necessary, reasonable, or proportionate to revisit broader, spatial strategy alternatives, as updated evidence and consultation representations on the Draft Local Plan and Interim SA Report in 2016 (EB202) did not suggest that there were any new District-wide spatial strategy alternatives that warranted consideration. This is explained in Chapter 7, paragraphs 7.27 - 7.32 of the SA (2017) (EB204).



**Inspector's Question 2**

- 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?**

***Response to Question 2***

47. Part 2 of the SA Report (2017) (EB204) presents an appraisal of the LPSV 2017. As set out in paragraph 8.2, the appraisal identifies and evaluates 'likely significant effects' of the Plan, using the sustainability topics and objectives as a methodological framework.
48. In developing the preferred approach, the Council explored a range of different alternatives for the spatial distribution of housing and employment growth to meet identified needs. The appraisal of these alternatives through the SA process identified the potential for any likely significant effects, as well as identifying any significant differences between them against SA topics/objectives. This is explained within Part 1 of the SA Report (2017) (EB204). Tables 6.3 and 7.2 in the SA Report (2017) (EB204) present a summary of the appraisals of reasonable alternatives undertaken in 2016 and 2017 respectively. They demonstrate that in relation to the majority of SA topics there are no significant differences against SA topics/objectives between the preferred spatial strategy and alternatives. While some are identified/ranked as performing marginally better or worse against SA topics/objectives, the majority are predicted to have the same residual effects. The appraisal of reasonable alternatives, along with analysis of the Draft Local Plan consultation feedback and the updated evidence base, fed into the determination of the Council's preferred approach.
49. Paragraph 9.152 of the SA Report (2017) (EB204) recognises that, for land and waste objectives, all alternatives would result in a similar conclusion and that there would be greenfield loss under a 'no plan' scenario. The SA Report also states that for historic environment, landscape and biodiversity and green infrastructure objectives, that there would be the potential to avoid and mitigate effects through site specific policy and detailed design of developments. It is also important to note that there would be negative effects even under a 'no plan' scenario as speculative development would doubtless come forward.

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

**Inspector's Question 1**

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

**Response to Question 1**

50. The Council's HRA process is consistent with the proper approach identified by the Court of Justice of the European Union (CJEU) in *People Over Wind, Peter Sweetman v Coillte Teoranta*,<sup>2</sup> (EB137). In that case, the CJEU ruled that Article 6(3) of the Habitats Directive must be interpreted as meaning that mitigation measures (referred to in the judgment as measures which are intended to avoid or reduce effects) should be assessed within the framework of an appropriate assessment (AA) and that it is not permissible to take account of measures intended to avoid or reduce the harmful effects of the plan or project on a European site at the screening stage. The implication of this judgment is that competent authorities cannot take account of any integrated or additional avoidance or reduction measures when considering, at the Habitats Regulations Assessment (HRA) screening stage, whether a plan is likely to have a significant adverse effect on a European Site.
51. The December 2017 HRA (EB206) was prepared prior to the CJEU delivering its judgment in the *People Over Wind* case on 12 April 2018. Notwithstanding this, paragraph 2.7 of the December 2017 HRA records that: "Natural England's response to the previous HRA of the Local Plan indicated that they would prefer the air quality analysis at Epping Forest to be classified as 'appropriate assessment' and that approach has therefore been followed in this report."
52. Subsequently, on the Council's behalf, AECOM have carried out additional work to update the HRA of the LPSV. The Council has now published the 'Habitats Regulations Assessment of Epping Forest District Council Local Plan', January 2019 (HRA 2019) (EB209). Paragraph 1.3 of the HRA 2019 explains that
- "The HRA report accompanying the submitted Local Plan was complete based on legal precedent and traffic and air quality modelling results as they stood at the time. Since that time however additional case law has clarified that consideration of mitigation measures must be deferred to the appropriate assessment stage of the HRA process, Natural England confirmed that they considered that an appropriate assessment was

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<sup>2</sup> Case C-323/17, 12 April 2018

necessary and in particular there has been extensively updated traffic and air quality modelling undertaken for Epping Forest SAC, following a methodology agreed with Natural England. As a result it is appropriate to produce this January 2019 HRA report including appropriate assessment. Since the amendments to create this report are extensive (with regard to creating an appropriate assessment and comprehensively updating the air quality work for Epping Forest SAC) this January 2019 HRA entirely replaces the HRA that was submitted with the Local Plan"

53. The HRA 2019 makes reference (at paragraph 2.5) to the ***People Over Wind*** case and how this has been addressed within the remainder of the document. In summary, all impact pathways where likely significant effects could not be dismissed without relying on mitigation (measures to avoid or reduce the effects) are taken forward to appropriate assessment. As such, the appropriate assessment has been expanded to cover recreational pressure and urban edge effects (which are inter-related) as well as air quality.
54. Consequently, it is considered that the HRA process, as recently reviewed, is consistent with the Judgment.

### **Inspector's Question 2**

- 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.**

### ***Response to Question 2***

- a. 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)? e**

55. Following restructuring of the HRA Report to create an appropriate assessment likely significant effects have been identified for Lee Valley SPA/Ramsar site and Wormley Hoddesdonpark Woods SAC. However, it is correct that no adverse effects on integrity requiring mitigation have been identified for any sites other than Epping Forest SAC.

**b. 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?**

56. The terms "Baseline", "Do Minimum" and "Do Something" are standard names for the scenarios covered by traffic-related air quality modelling, as set out in the Design Manual for Roads and Bridges ("DMRB").<sup>3</sup> Baseline is the reference year, typically the year for which traffic counts are available and/or the opening year of the scheme or commencement year of the plan. "Do Minimum" is the forecast future air quality in the assessment year (typically the opening year of the scheme or completion year of the plan, where traffic generation will be greatest) including expected changes in air quality due to traffic growth from other authorities and other interventions (e.g. improved vehicle emission standards) but excluding the plan or project under particular consideration (i.e. Epping Forest District Local Plan in this case). "Do Something" is identical to "Do Minimum" but adds in the plan or project under consideration (i.e. Epping Forest District Local Plan in this case).
57. Calculation of these three scenarios therefore enables: (a) comparison of the "Do Something" results with "Baseline" to ascertain the total change in air quality between base year and assessment year; and (b) comparison of the "Do Something" results with the "Do Minimum" results to specifically observe the contribution the given plan or project (Epping Forest District Local Plan in this case) makes to that overall change. The above scenarios relate specifically to the assessment of air quality effects on the Epping Forest SAC, and were terms used in the December 2017 HRA.
58. However, a letter was received from Natural England, dated 29 March 2018 (EB207) which provided further advice with respect to a number of matters, including with regard to the methodology that should be pursued in undertaking further assessments of air quality effects. Four principal points emerged:
- (a) Natural England wished to be able to separate out the effects of a continuation of the existing improving baseline (due for example to improvements in vehicle emission factors) from the negative contribution of additional traffic growth; this is not possible using the two conventionally modelled future scenarios ("Do Minimum" and "Do Something") which merge together the effects of traffic growth and of any improving (or deteriorating) baseline;
  - (b) Natural England wanted the Baseline to be backdated to 2011 since this was the start year of the Local Plan (in the event reliable traffic data has only been available since 2014 and this has therefore been used and it is

<sup>3</sup> <http://www.standardsforhighways.co.uk/ha/standards/>

understood that Natural England are satisfied with this approach – see bullet point d. below);

- (c) Natural England wanted traffic generation attributable to growth within the West Essex/East Herts HMA (including permissions granted since 2014) to be separately visible from growth outside the HMA. Again, this is not visible in the conventional two future scenarios, which place all growth other than Epping Forest District Local Plan into a single Do Minimum scenario.
- (d) Natural England wished some modelling to be undertaken which showed the expected trend in emissions between 2014 and 2033. Again, this is not possible in conventional modelling which only shows the start and end years. The further air quality modelling work that has been undertaken has had regard to that advice, including with respect to the scenarios to be used, and the approach to be taken for comparative purposes. Natural England confirmed by email on 21 November 2018 that the updated modelling scenarios have taken on board its advice as detailed in the letter of 29 March 2018 and this approach has been incorporated into the HRA 2019 (EB209) that has recently been published. The definitions of the scenarios as they now apply are set out in the table on page 18 of the HRA 2019 (EB209).

**c. 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?**

- 59. The HRA 2019 (EB209) has taken account of the recent visitor survey information which has identified an extended Zone of Influence for the purposes of identifying the potential sources of recreational pressures on Epping Forest SAC. As a result, a number of sites that had been screened out of the assessment in 2017 have now been screened in. Notwithstanding this, paragraph 4.25 of the LPSV makes it clear that the Council will seek contributions to support the development and implementation of an access management strategy as determined by an up-to-date visitor survey.
- 60. An interim approach to managing recreational pressure was adopted by the Council on 18 October 2018 (EB208) as a material consideration in the determination of planning applications. The interim approach sets out the most up-to-date Zone of Influence. The Council, in developing the strategy, determined to take a proportionate approach, based on evidence, and having had

regard to Section 122 of the Community Infrastructure Regulations 2010, only to seek contributions from those residential development proposals which fall within the 'inner' 0 – 3km Zone.

61. Natural England, in a letter of 1 October 2018 (EB 208), set out its support for the approach which at that point had been detailed in papers circulated for the Co-Operation for Sustainable Development Member Board on 10 September 2018. These papers formed the basis of the approach that was subsequently adopted by the Council. Ultimately, the mechanism for securing contributions is for the individual authority to determine, so long as the sums of monies secured are sufficient to provide the funding for the access mitigation and management measures, a matter with which Natural England concurs.

**d. 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?**

62. Yes - the Likely Significant Effect screening identified the following impact pathways in relation to the Epping Forest SAC are as follows:
- (a) Recreational pressure and urbanisation;
  - (b) Atmospheric pollution.
63. An appropriate assessment for both of these impact pathways has been undertaken to ascertain whether the integrity of the Epping Forest SAC will be adversely affected. These assessments are set out in Chapters 5 and 6 of the HRA 2019 (EB209)

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

64. The Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations") do not require impacts to be avoided as an alternative to 'mitigation'. Indeed, neither of those terms is used in the Regulations at all. The legal test is simply that adverse effects on site integrity (coherence of structure and function) will not arise. Whether the method used to achieve that outcome is termed avoidance or mitigation is not relevant to legal compliance. Nonetheless, it is recognised that the consideration of avoidance is an appropriate 'first step' with respect to good development planning.

65. With respect to the impact pathways of atmospheric pollution, the only way of completely avoiding harm would be not to provide for any development within Epping Forest District. Within the context of the Government's clear priorities of securing the delivery of much needed housing and economic growth, such an approach would be contrary to national policy and guidance. As such, when balancing a range of considerations, including matters of public interest, if avoidance is not an option, then national policy and guidance provide, as the next step, the ability to mitigate any harm (i.e. to reduce it to an insignificant level).
66. With respect to recreational pressure and urbanisation avoidance, the avoidance of harm could, in theory, be achieved by placing all new development more than 6.2km from the SAC. However, this would result in an illogical and unsustainable pattern of future housing development. Consequently, such an approach to avoidance as described above would not be justified or necessary.

**f. 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)?**

67. Policy DM 2 does not "defer consideration of the implications of allocated sites to the planning application stage". The environmental implications of all allocated sites are discussed in the HRA 2019 supporting the Plan (EB209).
68. For the avoidance of doubt, Policy DM 2:
- (a) Makes it clear (clause B) that developments for which European site issues exist (e.g. within 6.2km of the SAC for recreation) must avoid adverse effects on integrity. This is a legal requirement anyway and also ensures that developers are aware they will need to contribute;
  - (b) Identifies (in C) those settlements where developments will need to contribute to the strategic mitigation solution for recreation – this is a good example of the Council delivering an effective mitigation solution to facilitate the delivery of planned development, by which developers need only make a financial contribution, without deferring consideration of the implication of planned development to the planning application stage;
  - (c) Notes (in D) that the Council "will ensure the provision of a meaningful proportion of natural greenspace".

69. Consequently, the only matters to be addressed at the detailed application stage are:
- (a) Making financial contributions to the strategic solution, which is both necessary and appropriate;
  - (b) Ensuring that the developments which are large enough to do so (e.g. strategic developments) deliver their own bespoke greenspace, which is in line with the approach to larger sites in Thames Basin Heaths; and
  - (c) Ensuring that sites very close to the SAC (within 400m) identify how they intend to minimise risk of such impacts, supplementary to the strategic approach being taken by the Council through the recreation/urban edge impact strategy (e.g. funding for managing fly tipping etc. in the SAC).
70. Access management for the Epping Forest SAC is a key aspect of the overall strategy rather than the provision of SANG, or similar, recognising that the largest proportion of visitors arise from within 3km of the SAC boundary and as such it is not realistic to create an area of greenspace that is as attractive as the Epping Forest. The provision of SANG is therefore supplementary and mainly for the strategic sites to deliver in order to ensure their future self-sufficiency (see paragraph 5.22 of the HRA EB209). Rather than being a general policy that pushes the issue down to the lower tier this policy is actually specific as to how the higher tier mitigation (the strategic Council solutions) and lower tier solutions interact.

**g. Is it correct that no likely significant effects have been identified for the other relevant designated sites (Lee Valley SPA/Ramsar Site; or Wormley- 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?**

71. Following restructuring of the HRA report to create an appropriate assessment likely significant effects have been identified for Lee Valley SPA/Ramsar site and Wormley Hoddesdonpark Woods SAC. However, it is correct that no adverse effects on integrity requiring mitigation have been identified for any sites other than Epping Forest SAC (see HRA 2019 paragraphs 5.5 – 5.16 pages 117-120 (EB209). Numerous precedents exist for interim mitigation strategies being devised and implemented prior to final mitigation strategies being developed, with Local Plans being adopted on the back of policies that commit to the mitigation strategies. The major example is in the South Hampshire area regarding the Solent European sites. The final mitigation strategy for recreational pressure (now known as BirdAware Solent) only came into being in December 2017 but



an interim strategy was operating from July 2014 and many relevant Core Strategies and Local Plans were adopted prior to 2017 (and indeed 2014). Another example is with regard to recreational pressure in Ashdown Forest where an interim strategy is operating and has been operating for a number of years, during which several Core Strategies and Local Plans have been adopted.

**h. What is the scope of the forthcoming Mitigation Strategy and what type of mitigation is envisaged for each type of likely significant effect? 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?**

72. The Mitigation Strategy for the Epping Forest SAC will comprise two elements as follows:
- (a) Addressing recreational impacts; and
  - (b) Addressing the air quality impacts.
73. The approach to the mitigation of recreational pressures, by way of access management projects, is set out in the Interim Approach to Managing Recreational Pressure adopted by the Council on 18 October 2018 (EB134). The projects, proposals and costs set out in the Interim Approach were provided by the Conservators of Epping Forest (as the Forest's custodians) and have been supported by Natural England (as confirmed in their letter dated 1 October 2018 (EB208). This includes the proposition that opportunities for SANG provision will be investigated further, recognising that such provision is already being sought as part of the masterplanning of some strategic site allocations in the LPSV. This investigation may include recognition of existing Natural Green Space, which could be effective in absorbing additional visitors if supported by appropriate investment.
74. With regard to air quality impacts, the strategy will build on existing national and international initiatives, which in their own right will contribute to an improvement in air quality over the course of the Plan period, as evidenced by the air quality modelling outputs within Section 6 (page 125 onwards) of the HRA 2019 (EB209). Considering the Epping Forest SAC within Epping Forest District as a whole, these national and international initiatives, combined with the initiatives described below, would result in a net reduction in nitrogen deposition and therefore result in no adverse effect. The methodology used to undertake the most up-to-date Air Quality Modelling work to support the Appropriate Assessment of the air pollution impact pathway is set out in the HRA 2019 (EB209).

75. The likely local mitigation measures are supported by LPSV Policies and Site Allocation requirements as follows:
- (a) Policy T 1 of the LPSV supports the securing of modal shift to sustainable forms of transport, supporting reduced parking and car free development in sustainable locations, and requires that all development which makes provision for parking spaces (regardless of use) must make provision for electric vehicle charging points (EVCPs). It is proposed to use planning conditions to secure EVCPs and to require that development proposals in appropriate locations will be required to provide a Travel Information Pack for sustainable transport and 6 free one day vouchers for use with the relevant local public transport operator;
  - (b) LPSV Appendix 6: 'Site Specific Requirements for Site Allocations' identifies a number of sites, which, because of their proximity to London Underground stations, should limit the provision of on-site residents' car parking to that required to service the essential needs of the development. This is also referred to in Paragraph 3.92 of the LPSV together with a proposition to review residential car parking standards;
  - (c) Policy SP 4 Development and Delivery of Garden Town Communities in the Harlow and Gilston Garden Town sets out the requirement to ensure the provision of integrated and sustainable transport systems for the Harlow and Gilston area that put walking, cycling and public transit networks and connections at the heart of growth in the area, to create a step change in modal shift through providing for and encouraging more sustainable transport patterns. Furthermore, the self-contained nature of the proposed strategic sites will support the reduction in the need to travel elsewhere for their day to day needs. All of these policy requirements, when taken together, will support a reduction in car usage and therefore contribute towards improvements in air quality over the Plan period.
76. These policy interventions, where possible, have been factored into the air quality modelling inputs and assumptions through the approach taken in Scenario DS5 (as set out in the Table on page 15 of the HRA). The approach to modelling the effects of the LPSV on air quality include scenarios that do not include physical highway works to provide evidence as to whether there is a need for such interventions to support improvements in air quality within the Forest (see the Table on page 15 of the HRA)..
77. The Council, in discussion with Natural England, has agreed that Policy DM 2 should be amended to include specific reference to the development and adoption of a Mitigation Strategy and detailed wording will be included within the SoCG. The Council and Natural England have agreed, in principle, to prepare a Statement of Common Ground ("SoCG"), that will provide the Inspector with a record of the additional work undertaken by the Council. It is recognised that the SoCG will be subject to the outcome of Natural England's review of the HRA 2019

(EB209). Nevertheless there is an ambition for the SoCG to be available in time for the first hearing session on 12 February 2019.

78. As set out in the response to Question 2. h. (above at paragraph 69), there are two impact pathways that will require mitigation measures and strategies to support their implementation. In order to provide the sufficient degree of confidence necessary to bring development forward, it is proposed that, effectively, there will be two timescales, as follows:
- (a) For air quality, the Council anticipates that this will be completed by the end of April 2019, although this date will be dependent on securing Natural England's support and the formal agreement by the Council.
  - (b) For recreational pressures it is anticipated that this will be completed by December 2019. The final strategy will be determined by the completion and analysis of a further Visitor Survey to be undertaken in the summer of 2019 followed by any necessary review of the projects set out in the current Interim Approach. This will then need to be agreed by key stakeholders, including Natural England and the Conservators of Epping Forest and the completion of any necessary Council approval processes.

**i. 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?**

79. The HRA 2019 (EB209) concludes at paragraph 6.23 – 6.25 that the modelled physical mitigation works for Wake Arms and Robin Hood Roundabout would not be viable and that the air quality mitigation measures outlined in the Local Plan and modelled as DS5 (which excludes physical highway improvements within the Epping Forest SAC) should be developed further as part of the proposed air quality mitigation strategy. It is understood that the projects proposed within the Interim Recreational Pressures Mitigation Strategy (EB208) have themselves been reviewed by Natural England at the request of the Conservators of Epping Forest and that Natural England has raised no objections to those projects.

- j. In the absence of a final Mitigation Strategy at this stage:**
  - i. Is it necessary to modify the Plan to require development proposals to comply with its recommendations?**
  - ii. 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?**
  - iii. 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]).**

- 80. As stated above (at paragraph 74), the Council has agreed with Natural England that Policy DM 2 should be amended to include specific reference to the development and adoption of a Mitigation Strategy. This amendment is the subject of ongoing discussion with Natural England and will be addressed in the proposed SoCG.
- 81. The Council is of the view that it will not be necessary for the final Mitigation Strategy to be completed before the Plan is adopted. With respect to recreational pressures, as noted in paragraph 78(b) (above), the Interim Approach is likely to be replaced by the final Mitigation Strategy toward the end of 2019 (as the Mitigation Strategy is to be informed by a further Visitor Survey which is due to be undertaken in early Summer 2019). In their letter dated 1 October 2018 (EB208), Natural England stated that "This interim proposal provides a solid base on which to further develop the final Mitigation Strategy...". The timescales with regard to air quality are set out in paragraph 75 (a) (above). Again, these matters will be addressed in the proposed SoCG.
- 82. The HRA 2019 records (EB209, Chapter 5) the work the Council has undertaken to respond positively and effectively to the concerns expressed by Natural England in its Regulation 20 Representations. Very considerable progress has been made by the Council to ensure that the necessary mitigation will be implemented without threatening the delivery of the Plan's strategy,

**Issue 6: Is the Plan legally compliant in terms of how it seeks to address climate change?**

**Inspector's Question 1**

- 1. Does the Plan include policies designed to secure that the development and use of land in the District contributes to the mitigation of, and adaptation to, climate change as required by Section 19(1A) of the PCPA?**

***Response to Question 1***

83. Yes - The LPSV provides a policy framework that supports the contribution to the mitigation and adaption of climate change, through both strategic spatial policies, and detailed site specific and Development Management Policies. Paragraph 1.5 of the Plan states that the LPSV "has been prepared under the legislative provision of the Planning and Compulsory Purchase Act 2004".
84. The Climate Change Background Paper (2016) (EB1604), sets out the Council's approach to tackling climate change. Paragraph 1.28 states that "the Council's strategy to meet the challenges of climate change has multiple threads that are interwoven into policy. Policy measures aimed at reducing impact on climate change and adapting to climate change appear throughout the Draft Local Plan and therefore the Council does not propose overarching policy beyond the broad presumption in favour of sustainable development provided by Draft Policy SP 1."
- (a) The rationale for this decision is set out in Paragraph 1.27 of the note, which states that a specific policy that would set targets in relation to aspects of climate change was not considered to be a meaningful approach, given the ever-changing international context, and the need to align with current national policy. There is also a need to demonstrate that policies are deliverable, whilst ensuring that the approach to addressing climate change is embedded throughout. A range of policies throughout the LPSV therefore respond to the challenge of climate change. Paragraphs 1.27 to 1.35 of the Climate Change Background Paper (2016) (EB1604) sets out the approach taken by the Plan to respond to the challenge of climate change in further detail.
- (b) The site selection process (see Site Selection Report EB805) ensures that the most suitable locations have been selected for development taking account of the protection of the highest value natural assets, protection of the best agricultural land for food production and selection of the most accessible places to local services. This is demonstrated in Policy SP 2, along with the site allocations in Chapter 5 of the LPSV. The transport

strategy seeks to encourage a shift to low and zero carbon forms of transport and reduce trip length of journeys for everyday needs, as demonstrated by Policies T 1, T 2 and DM 9. The development strategy seeks to deliver significant improvements to the natural environment, including delivering a green infrastructure strategy and network. This is demonstrated by policies SP 6 and DM 5.

- (c) Policies DM 15, DM 16, DM 17, DM 18 and DM 21 are in place to ensure development incorporates necessary measures to reduce the risk of surface water flooding, support the improvement of water quality and ensure that design measures are incorporated where there is development in river flood risk areas.
- (d) Policies such as DM 9 and DM 20 encourage the use of low carbon and renewable technologies and energy as a consideration in design and sustainable construction as well as co-location of facilities to develop heat and power networks.
- (e) Policies SP4, DM 9, DM 11 and DM 19 require design coding, place-shaping and masterplanning on strategic sites, and ensure that development demonstrates a design process that has sought to ensure a minimal environmental impact, encourages low carbon lifestyles and has low levels of water usage.

***Issue 7: Is the Plan legally compliant in respect of superseded policies; mapping; and monitoring?***

**Inspector's Question 1**

- 1. Does Appendix 2 need to explain which policies of the new Plan supersede which policies of the old plans? Could this be confusing and would it be sufficient to simply list the plans and policies to be superseded?**

***Response to Question 1***

85. Regulation 8(1)(5) of the Town and Country Planning Regulations 2012 states that 'where a local plan contains a policy that is intended to supersede another policy in the adopted development plan, it must state that fact and identify the superseded policy.' EFDC considers that Appendix 2 of the LPSV complies with this requirement and the Council's preferred approach is to maintain Appendix 2 in its current form. However, the Council would be happy to consider an alternative approach if it is deemed to be more appropriate.

**Inspector's Question 2**

- 2. What does the "submission policies map" consist of? Is it just the single map of the whole district printed at 1:30,000 scale at A0 size, or does it include the A4 Maps within the Plan itself?**

***Response to Question 2***

86. The "submission policies map" is the single A0 size map at 1:30,000 scale (EB114B) and does not include the A4 maps within the Plan, including those within Appendix 6 (EB114A).

**Inspector's Question 3**

- 3. Is the geographic illustration of all relevant policies in the Plan shown on the submission policies map?**

***Response to Question 3***

87. Yes, the geographic illustration of all relevant policies in the Plan are shown on the Submission Policies Map. Some of the designations identified in Policy DM 6 e.g. allotments, amenity green spaces, cemeteries etc. are shown on the web based version of the policies map only but not on the printed version. This is because there are a large number and size of these designations which would be difficult to read on a printed AO map.
88. The flood zones identified in the SFRA are also not currently shown on the printed policies map but are available on the web version.

**Inspector's Question 4**

- 4. Whether or not the A4 maps in the Plan form part of the submission policies map, are the legends clear and comprehensive? Some of the legends include designations not shown on the maps and *vice versa*. For example, the legend for Map 2.2 includes Traveller allocations, but there are none on the map. By contrast, Map 2.2 includes diagonal green hatching and green and brown dots which are not on the legend. Should such inconsistencies be resolved throughout the plan?**

***Response to Question 4***

89. The Council has sought to include only the key local plan policy designations on the A4 Maps. A full legend can be found in Appendix 6: 'Site Specific Requirements for Site Allocations'. A full legend is also shown on the submission policies map (EB114B). The Council agrees that legends for individual A4 maps, particularly maps 2.2, 2.3 and 2.4 could be improved to provide further clarity. The Council therefore proposes that a full legend should be added to the LPSV after page 44; and maps 2.2, 2.3 and 2.4 should refer to this full legend.



**Inspector's Question 5**

**5. Does the Plan include a Key Diagram as required by paragraph 157 of the NPPF?**

***Response to Question 5***

90. Para 157 of the NPPF 2012 states that Local Plans should '...indicate broad locations for strategic development on a key diagram and land-use designations on a proposals map'. The NPPF 2012 also refers to the term 'broad locations' in paragraph 47 where it says local planning authorities should 'identify a supply of specific, developable sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15...'. The LPSV has not designated any 'broad locations' for growth and all the strategic development has been included in the submission policies map (EB114B). The Council has therefore taken the view that a Key Diagram is not essential for the LPSV. If the Inspector considers it would be helpful the Council would be happy to prepare a Key Diagram for the LPSV.

**Inspector's Question 6**

**6. Will the indicators in Appendix 3 enable the effectiveness of the Plan's polices to be monitored?**

***Response to Question 6***

91. Yes, the indicators in Appendix 3 will enable the effectiveness of the Plan's polices to be monitored.

**APPENDIX A: Examination documents referred to in this statement**

<b>Reference</b>	<b>Document Title</b>	<b>Author</b>	<b>Date</b>
EB101	<a href="#">Local Development Scheme</a>	EFDC	October 2017
EB101A	<a href="#">Local Development Scheme</a>	EFDC	November 2018
EB104	<a href="#">Statement of Community Involvement</a>	EFDC	
EB105	<a href="#">Local Plan Update Cabinet Report</a>	EFDC	
EB106	<a href="#">Draft Local Plan Regulation 18 Consultation Cabinet Report</a>	EFDC Cabinet Report	July 2017
EB111	<a href="#">Draft Local Plan Consultation Strategy</a>	EFDC	2018
EB114	<a href="#">Report to Council for Extraordinary Meeting</a>	EFDC	2017
EB114A	<a href="#">Local Plan Submission Version - Appendix 6 Site Specific Requirements</a>	EFDC	December 2017
EB114B	<a href="#">Local Plan Submission Version - Policies Map</a>	EFDC	December 2017
EB115	<a href="#">Regulation 22 Consultation Statement</a>	EFDC	
EB119	<a href="#">Duty to Cooperate Statement</a>	EFDC	December 2017
EB1200	<a href="#">Memorandum of Understanding Managing the Impacts of Growth within the West Essex / East Hertfordshire HMA on Epping Forest SAC</a>		2017
EB1202	<a href="#">Memorandum of Understanding on Distribution of Objectively Assessed Housing Need</a>	West Essex/East Herts authorities	March 2017

**Matter 1: Legal Compliance**  
**Statement by Epping Forest District Council**  
**January 2019**

<b>Reference</b>	<b>Document Title</b>	<b>Author</b>	<b>Date</b>
EB122	<a href="#">Draft Local Plan Consultation Strategy</a>	EFDC	
EB126	<a href="#">Epping Forest District Local Plan Soundness Self Assessment Checklist</a>	EFDC	
EB127	<a href="#">Approved Judgment – R (CK Properties (Theydon Bois) Ltd v Epping Forest District Council [2018] EWHC 1649 (Admin))</a>	HMCTS	29 June 2018
EB1302	<a href="#">Co-op Member Board Minutes</a>	Member Board	31 July 2017
EB1323	<a href="#">Terms of Reference - Cooperation for Sustainable Development Board</a>	Member Board	September 2018 update
EB1323A	<a href="#">Terms of Reference Update</a>	EFDC	2018
EB1330	<a href="#">Garden Town Member Board</a>	Garden Town Team	January 2018
EB1336	<a href="#">Terms of reference - Harlow and Gilston Garden Town Board</a>	Garden Town Board	July 2018
EB134	<a href="#">Interim Approach to Managing Recreational Pressure on the Epping Forest Special Area of Conservation</a>	EFDC	2018
EB137	<a href="#">Judgment in People Over Wind, Peter Sweetman V Coillte Teoranta</a>	CJEU	2018
EB1500	<a href="#">Harlow Strategic Site Assessment</a>	AECOM	2016
EB1604	<a href="#">Climate Change Background Paper</a>	EFDC	October 2016
EB200	<a href="#">Sustainability Appraisal and Habitats Regulations Assessment Scoping Report</a>	Scott Wilson	2010

**Matter 1: Legal Compliance**  
**Statement by Epping Forest District Council**  
**January 2019**

<b>Reference</b>	<b>Document Title</b>	<b>Author</b>	<b>Date</b>
EB201	<a href="#">EFDC LP Interim Sustainability Appraisal Report.</a>	URS	2012
EB202	<a href="#">Sustainability Appraisal Report for the Epping Forest District Draft Local Plan.</a>	AECOM	2016
EB202A	<a href="#">Non-Technical Summary of the Sustainability Appraisal of the Epping Forest District Draft Local Plan.</a>	AECOM	2016
EB203	<a href="#">Sustainability Appraisal of Strategic OAHN Spatial Options.</a>	AECOM	2016
EB204	<a href="#">Sustainability and Equalities Impact Appraisal.</a>	AECOM	2017
EB204A	<a href="#">Sustainability and Equalities Impact Appraisal Non-Technical Summary.</a>	AECOM	2017
EB206	<a href="#">Habitats Regulations Assessment</a>	AECOM	December 2017
EB206A	<a href="#">Habitats Regulations Assessment Non-Technical Summary</a>	AECOM	November 2017
EB207	<a href="#">Local Plan Habitats Regulations advice to Epping Forest District Council</a>	Natural England	March 2018
EB208	<a href="#">Response to the Proposed Interim Approach to the Managing Recreational Pressure on the Epping Forest Special Area of Conservation</a>	Natural England	2018
EB209	<a href="#">Habitats Regulations Assessment</a>	AECOM	January 2019

<b>Reference</b>	<b>Document Title</b>	<b>Author</b>	<b>Date</b>
EB405	<a href="#">Strategic Housing Market Assessment</a>	ORS	2015
EB406	<a href="#">Updating the Overall Housing Need: Based on 2014-based projections for West Essex &amp; East Herts</a>	ORS	2016
EB407	<a href="#">Strategic Housing Market Assessment</a>	ORS	2017
EB602	<a href="#">Employment Land Supply Assessment</a>	Arup	2017
EB603	<a href="#">Employment Review</a>	Hardisty Jones Associates	2017
EB703	<a href="#">Open Space Study</a>	4 Global	2017
EB713	<a href="#">Built Facilities Strategy</a>	4 Global	March 2018
EB714	<a href="#">Playing Pitch Strategy</a>	4 Global	March 2018
EB805	<a href="#">Site Selection Report</a>	Arup	2018