

EPPING FOREST DISTRICT LOCAL PLAN

EXAMINATION HEARINGS

HOMEWORK NOTE 35

MATTER 16: DEVELOPMENT MANAGEMENT POLICIES

ISSUE 1: DM 2 AND DM 22

HW35: UPDATE ON POLICIES DM 2 AND DM 22

1. The Council provides this note which concerns Matter 16, Issue 1 and the Inspector's request that the Council engage with Natural England and the Conservators of Epping Forest with regard to proposed amendments to Policy DM 2 and Policy DM 22 of the Local Plan Submission Version ("LPSV") to address the potential impact of increased recreational pressure and air pollution on the Epping Forest Special Area of Conservation ("EFSAC") arising from traffic-generating development proposed within the LPSV.
2. Following the hearing session on 21 May 2019, as agreed, the Council consulted Natural England and the Conservators of Epping Forest inviting both parties to provide the Council a joint response setting out the changes to both Policies and associated supporting text, which they contend are necessary for soundness and legal compliance. Natural England and the Conservators of Epping Forest provided the Council with their joint response on 7 June 2019 (attached as Appendix 1), the detail of which has now been considered by the Council.
3. The Council's response to the amendments proposed by Natural England and the Conservators of Epping Forest in their joint letter of 7 June 2019 is set out in paragraphs 4 to 9 below. In addition, a composite of Policy DM 2 and DM 22 which incorporates a

number of amendments previously proposed by the Council and tabled at the Hearing Session on 21 May 2019 where they continue to apply together with amendments proposed by the Council having had regard to the letter of 7 June 2019, is attached at Appendix 2.

POLICY DM 2 EPPING FOREST SAC AND THE LEE VALLEY SPA

4. DM 2 Part A: The Council considers that the proposed amendments to DM 2 Part A provide a helpful clarification.
5. DM 2 Part B: The Council considers that the proposed amendments to Part B provide a helpful clarification, including with respect to separating out the different components of mitigation as proposed by amendments B1, B2 and B3. The Council has, however, some further comments regarding the precise wording of B1, B2 and B3 as follows:
 - (a) DM 2 Part B1: The Council notes that it is suggested that the amendment proposed should be completed once the strategy has been agreed and then to be cross-referenced to Policy DM 22. However, the Council does not concur with this view and considers that Part B1 can be finalised and has proposed wording to this effect in order to assist the Inspector.
 - (b) DM 2 Part B2: The Council considers that the proposed amendment is, for the main part, a helpful clarification. However, the Council would propose a further amendment in order to provide flexibility in the application of Part B2 recognising that it will be for the Council to determine which residential developments make a contribution, and also to make it clear that such contributions will be financial.
 - (c) DM 2 Part B3: The Council considers that the proposed amendment is, for the main part, a helpful clarification but has proposed a further amendment in order to provide flexibility in the application of Part B3. This is in recognition that in some instances the Council may determine that residential development of a certain type or in a certain location may be required to make a financial contribution towards the implementation of the SANGs strategy.
6. DM 2 Part C: The Council is of the view that 400m is the appropriate distance for inclusion in DM 2 Part C. This is on the basis that any distance for a zone needs to be based upon some definition of 'easy access' on the basis that people who live within

short, easy reach of the SAC are perhaps more likely to do undertake the urbanising activities previously identified in DM 2 Part E of the LPSV (i.e. fly-tipping, the introduction of non-native plant species and incidental arson) than people who live more distant. The 400m distance equates to a 5 minute walking distance (as the crow flies) to the EFSAC (as opposed to a distance of 400m used elsewhere with regards to cat migration as it relates to the effects on fauna within Special Protection Areas) as a definition in the updated Habitats Regulations Assessment 2019 (EB209). This is not an exclusion zone but rather a zone within which applicants would need to introduce their own measures above and beyond the contribution to Site Access Management and Monitoring measures. Furthermore, the Council has concerns regarding the proposed amendment, as currently worded, in that it is not in accordance with paragraph 118 of the NPPF 2012 and in particular the first part of the second bullet point as follows:

“...proposed development on land within or outside a Site of Special Scientific Interest likely to have an adverse effect on a Site of Special Scientific Interest (either individually or in combination with other developments) should not normally be permitted. Where an adverse effect on the site’s notified special interest features is likely, an exception should only be made where the benefits of the development, at this site, clearly outweigh both the impacts that it is likely to have on the features of the site that make it of special scientific interest and any broader impacts on the national network of Sites of Special Scientific Interest..”

7. Whilst the above extract is within the context of Sites of Special Scientific Interest (SSSIs), the NPPF 2012 does not differentiate between those SSSIs which are also European sites and those which are not. The Council is of the view that if a site level Habitats Regulations Assessment demonstrates that a development will not have an adverse effect as a result of urbanisation (including through the imposition of appropriate planning conditions) then the inclusion of the phrase ‘exceptional circumstances’ is not appropriate. The Council has therefore proposed alternative wording which maintains the spirit of the amendments proposed by Natural England and the Conservators of Epping Forest but with changes to overcome the Council’s concerns set out above.

POLICY DM 22 AIR QUALITY

8. DM 22 Part B: The Council considers that the proposed amendments provide helpful clarification. However, the wording is not consistent with that proposed for Policy DM 2 and has therefore proposed further changes in order to ensure consistency.

9. DM 22 Part C: This part of Policy DM 22 relates to all development which has the potential to produce air pollution, including, but not limited to, those which may have a likely significant effect on the Epping Forest Special Area of Conservation. Furthermore, the Council has previously sought to ensure that a proportionate approach is taken to the requirement for the need to undertake an air quality assessment by referencing those developments which require a Transport Assessment or Transport Statement. Furthermore, as Part C relates to all development that has the potential to produce air pollution not all air quality assessments may need to have taken into account 'all other material sources of pollution (such as air, sea, and land transport, and agriculture). Consequently the Council considers that this proposed amendment should not be included but rather that the Air Quality Mitigation Strategy would be the appropriate place within which to provide guidance as to what sources of pollution should be taken into account in developing Epping Forest Special Area of Conservation related air quality assessments. The Council has also proposed inclusion of the reference to 'financial' in relation to contributions for the sake of clarity.