

EPPING FOREST DISTRICT LOCAL PLAN 2011 – 2033
STATEMENT TO THE EXAMINATION
ON BEHALF OF WATES DEVELOPMENTS [19LAD0042]

MATTER 1: LEGAL COMPLIANCE

1. This statement has been prepared by Vincent and Gorbings on behalf of Wates Developments Limited. Wates is a family run development company with land interests adjoining Epping town centre. Wates is also a member of the Epping Housing Forum, a group that has been created to bring together a number of different organisations to speak with one voice at the forthcoming Local Plan examination with regard to overall housing requirements.
2. Wates has made representations throughout the Local Plan process and wishes to ensure that this process leads to a legally compliant and sound Plan with a sustainable development strategy, including housing delivery to meet identified needs in the most sustainable locations, supported by appropriate infrastructure delivery.
3. Wates does not wish to comment on every Matter, Issue and Question raised by the Inspector, and therefore the following is restricted to those issues and questions of particular relevance to our representations.
4. We would preface these comments by commenting that we do not believe it would be in the interests of good planning of the future of Epping Forest for the Inspector to immediately find that the submitted Local Plan fails the tests of statutory legal compliance. However, we do consider that there are serious flaws in the process by which the Council has prepared the Local Plan. These flaws in process have manifested themselves in the content and soundness of the Local Plan (particularly in the overall housing requirement, Green Belt releases and proposed allocations). In essence, the failure of elements of the process provides a critical context as to why the Plan, as presently drafted, is unsound.

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

National Policy and Advice

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- 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?***
 - 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?***
5. Wates comment on questions 2 and 3 of Issue 1 on the basis of its continued participation in the emerging neighbourhood plan (“NP”) for the town of Epping. A Draft NP was published for consultation in May 2018. However, as the Epping Town NP is not made, no regard should be had to it in preparing the Local Plan.

6. The Local Plan must clearly set out strategic policies and any NP following the Local Plan must ensure compliance with these strategic policies. Given the significant change in strategic planning in Epping District as a result of this Local Plan – particularly the housing requirements and allocations – the release of land from the Green Belt is a strategic issue which should not be delegated to emerging NPs. Decisions as to which areas of Green Belt to release must be based on a comprehensive Green Belt review that evaluates the sensitivity of land to development and/or change having regard to its contribution to the purposes of the Green Belt.
7. Policy D6 of the Local Plan refers to the need for NPs to comply with ‘strategic policies’ and policy SP5 (Green Belt and District Open Land) is itself a strategic policy; this policy in turn refers to the boundaries of the Green Belt as defined in Chapter 5 of the plan, which take account of the allocations identified in Policy P1 – P14. Whilst as written the policy should therefore ensure that NPs comply with the Green Belt releases eventually adopted as part of the Local Plan it would be helpful for the policy to be made explicit by the addition of the words :-

*“The Council will support the preparation and production of Neighbourhood Plans. Neighbourhood Plans should:
(i) Show how they are contributing towards the strategic objectives of the Local Plan and that they are in general conformity with its strategic approach and policies, including the changes to the Green Belt boundary proposed in Chapter 5 of the Local Plan.”*
8. Moreover, it is important that emerging NPs such as that at Epping Town, do not make these decisions prior to the adoption of the Local Plan. Wates are concerned that rather than the Local Plan making strategic decisions about Green Belt release, there is evidence at Epping that the views of those preparing the emerging NP have been doing so.
9. By way of example, the Regulation 18 consultation on the Local Plan proposed a number of Green Belt releases at Epping. In broad terms, these allocations were consistent with the findings of the Green Belt review and site assessments and were therefore evidence based. The Town Council made representations at Regulation 18 stage and raised objection to four significant Green Belt releases at Epping amounting to 535 units. The Town Council also proposed an increase in dwelling yield at Epping South (from circa 600 to circa 830 units) and an overall reduction in the allocation to Epping. When the Regulation 19 plan was published for committee approval in December 2017, all of the changes proposed by the Town Council were reflected in the draft Local Plan, with the four allocations removed from the plan, without justification. The subsequent draft NP, published in June 2018, unsurprisingly reflected the Regulation 19 Local Plan.
10. Consequently, Wates is seriously concerned that despite the extensive evidence base that led to the Regulation 18 plan, submissions made by those drafting the Epping NP led to strategic changes to the emerging Local Plan that were not evidence based. This reinforces the case that no regard should be had to the emerging Epping NP at this stage; and that emerging NPs should generally await the outcome of the Local Plan process. We have made detailed representations to Epping Town Council to the effect that if they were to advance the NP prior to the Local Plan being found sound, no Inspector would consider that the NP had met the basic conditions tests.

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?

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

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

b. Was the Regulation 19 version of the Plan adequately publicised compared to previous draft versions?

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?

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:

g. 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?

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

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

11. Wates has participated in the Local Plan process for the last 10 years. The Council undertook a wide range of consultation events over these years. However, in terms of the *allocations*, we consider that consultation has largely been limited to the statutory stages of the plan making process which has only allowed the community to comment on the sites before them rather than any meaningful alternatives.
12. Indeed, the only consultation opportunity that the local community has had where they were able to express a comment on the alternative sites (including those that had been ruled out) was at the time of the 'Community Choices' consultation undertaken by the District Council in 2013. At this time, the public expressed their own views about the various potential greenfield allocations around Epping. By way of example, the Stonards Hill site (SR-0071 in the Consultation Draft [Reg 18] Local Plan) ranked second out of the 8 sites considered, with 54% of respondents supporting the site, compared to only 40% supporting the land which has now been allocated at Epping South. Despite this, the Stonards Hill site was removed and the allocation to Epping South site significantly increased. The Town Council, who, as stated above, appear to have had such a significant influence on the allocations now proposed, have equally undertaken no genuine

consultation which has considered the alternatives to the sites now proposed in the draft Local Plan and the draft NP.

13. As the Inspector notes in her question, there were significant changes between the Regulation 18 and Regulation 19 statutory consultation stages. The allocations in Policy SP2 were reduced from 11,290 to 9,816 units (a reduction of over 13%). The proposed changes to the Green Belt boundary were significantly altered.
14. In our view the Council Council should have undertaken a further Regulation 18 consultation, with the evidence fully available to allow consideration of the option now presented; they did not do so. This was driven by the (then) deadline for submitting the Local Plan in January 2018 to avoid the pending introduction of the new standardized approach to assessing housing requirements.
15. The failure to consider the views of the public is evidenced in the allocations at Epping. As highlighted above, it was clear in 2013 that the Epping South site was not popular compared to other options. Yet the Council, consistent with the representations of the Town Council, significantly increased the amount of development at Epping South and deleted alternatives. The report of the Regulation 19 Consultation [EB115A] reveals that comments on the two South Epping component sites yielded 66 and 56 responses respectively, the second and third highest number of responses of all sites allocated within the Local Plan. It is therefore clear that there is a significant level of objection to Epping South; this has been clear from earlier consultations yet the Council have ignored these representations.
16. Moreover, as the Inspector highlights, at the time of the Regulation 19 consultation, Appendix B of the Site Selection Report was absent. It was therefore impossible to comment on the justification for the changes in site allocations. Whilst this matter has been the subject of legal challenge, the consideration of this issue at this Examination is quite different. Wates attempted to discuss with the Council exactly why their site had been omitted, but this proved not to be possible. It is accepted that the Council allowed further representations on the site assessments for four weeks in March/April 2018 by e-mailing those who had made representations (although we can find no evidence of receiving that email and therefore did not make further representations). Appendix B was subject to limited consultation, as we understand that only those who previously submitted representations about its absence at Reg 19 were notified and there was no mention of the additional consultation stage on the Council's website.
17. Moreover, the additional consultation was limited to Appendix B and C of the Site Assessment document, whereas other appendices were also unpublished at the time of the Regulation 19 consultation, including Appendix F on employment sites. Furthermore, the additional appendices comprised a vast quantity of analysis and the additional consultation lasted only 4 weeks, prejudicing the ability of respondents to properly assess and respond to this information. By that time (March 2018), the Government had already made clear that the new standardised approach would not take effect in the event the Local Plan was submitted within 6 months following publication of the new NPPF (which was still awaited). This allowed the Council ample opportunity to undertake a further statutory Reg. 19 consultation in mid- 2018 at a time when all of the evidence base was available. It did not do so.

18. We consider that the lack of consultation following changes between Reg 18 and Reg 19, and subsequent to this when the site assessments were published, does raise legal compliance issues. However, we consider that this could be remedied by further consultation on the plan (and particularly the allocations) if the Inspector finds that the overall housing provision is insufficient and/or some of the allocations are questionable in their deliverability (particularly in the first 5 years of the plan). If this were to occur, the Council would be required to embark on a further round of consultation in considering further sites and consulting the public on these sites. In our view, this process would provide an appropriate opportunity to properly consult the public in a way that they have failed to do to date. If, to the contrary, no further consultation was considered necessary (as the amount and deliverability of housing site as presently proposed was found sound) the failure to consult to date could not be remedied and the legal compliance of the plan would be brought into serious doubt.

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

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

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- e. In preparing any appropriate assessment, has avoidance of harm been considered before mitigation or compensation? If not, should it have been?***
 - 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)?***
19. EFDC has a duty as the 'competent authority' under the Habitats Regulations to protect Epping Forest Special Area of Conservation (SAC) from the effects of development. This must be addressed by ensuring new development does not have an adverse impact on the special interest of the SAC. A core principle of government policy (NPPF, 2018) in the protection and enhancement of biodiversity and protected sites is the application of the mitigation hierarchy with avoidance of adverse impacts of primary concern, followed by mitigation measures, and as a last resort, the application of compensatory measures. The allocations in the Local Plan must follow this approach. As a Mitigation Strategy has not been in place during the production of the plan, a series of potentially significant impacts on Epping Forest will arise from the allocations as now proposed. The Local Plan is already part way down the mitigation hierarchy having failed to properly consider avoidance measures rather than allocating sites that cause impacts requiring mitigation or compensation.

20. The *People Over Wind* judgement brings into further question the process by which the Draft Local Plan has been prepared. It has been standard working practice for plans or projects that may affect European nature conservation sites such as Epping Forest to include incorporated mitigation measures from the initial stages of the Habitat Regulations Assessment (HRA) process. However, the *People Over Wind* case has ruled that mitigation cannot be taken into account when considering the screening test for Likely Significant Effects. Therefore, many developments cannot now be screened out. Indeed, in our view this throws further doubt on the legality of the strategic mitigation approach which is embodied in the Draft Local Plan.
21. We understand that a Draft Mitigation Strategy has now been agreed, but this has come *after* the Regulation 19 plan was published and decisions made by the Council on proposed site allocations (including their yields). We note that Natural England stated in their Regulation 19 Representations that
- “Since Natural England’s concerns regarding impacts on Epping Forest Special Area of Conservation and SSSI relate to the in combination effects of development we cannot consider any of the site policies sound until uncertainty relating to impacts on the designated sites have been resolved.”* [19STAT0027]
22. Indeed, we consider that the identification of allocations around Epping town in particular has failed to give sufficient weight to the impact of development on the Epping Forest SSSI and SAC in the allocation process, and lack any positive proposals for provision of ‘Suitable Accessible Natural Green Space’ (SANGS). The allocations lack any commitment to the provision of sufficient public open space to mitigate the recreational impacts of the volume of housing on the Forest, even if such an approach were legitimate. The general policy requirement in Policy DM2 (D) to provide a ‘meaningful proportion of Natural Green Space’ to mitigate for adverse impacts is vague and will not be effective. As the Conservators of Epping Forest rightly stated in their representations, the policy is *“ambiguous as there is no clarity on what a meaningful proportion of greenspace might be and is unlikely to be effective. In order to function effectively, alternative greenspace sites need to be of a suitable size, design and location to draw access. It cannot be assumed that there is adequate greenspace in suitable locations or that this can be delivered. There is the risk that the mitigation as stated cannot be delivered.”* [19STAT0035]
23. We consider that resolving this issue is likely to frustrate the delivery of some allocations and reduce the capacity of others, particularly those in closer proximity to the Forest. This goes to the heart of soundness of the Local Plan. This is particularly so for the allocation at Epping South. The Epping South Masterplan Area is 600m by road from the SAC and the western limit just falls within 400m from the nearest point of the SAC as the crow flies. For the Thames Basin Heaths SPA Avoidance Strategy 400m represents the inner exclusion zone where there is a presumption against new residential development as the impact on the SPA is likely to be such that it is not possible to conclude no adverse effect on the SPA. The proximity of the Masterplan Area makes it within relatively easy walking distance of the SAC. It is unsurprising that the Conservators of Epping Forest have themselves stated of Epping South that *“The doubling of the housing numbers would seem to call into question the availability of sufficient green space at these sites for them to “consume their own smoke”. These two developments are likely to have significant*

adverse impacts through the increased recreational pressure on the Forest, including the SAC, and also on the nearby Forest Buffer Lands at Great Gregories.” [19STS0035].

24. The failure of the Local Plan to properly take account of this issue brings into question its legal compliance unless it can be demonstrated that mitigation is feasible whilst still providing the forecast number of housing units.
25. In summary, in answer to the Inspector’s questions, avoidance of harm has not been properly considered before mitigation or compensation and therefore the Plan fails to comply with the NPPF in this regard.
26. Furthermore, it cannot be right for the purpose of any appropriate assessment, to defer consideration of the implications of allocated sites to the planning application stage as there is no evidence that successful mitigation can be implemented whilst delivering the requisite number of units and maintaining viability. The soundness of the allocations and the yields assumed for each cannot be justified unless that assessment is undertaken now as part of the allocation process.