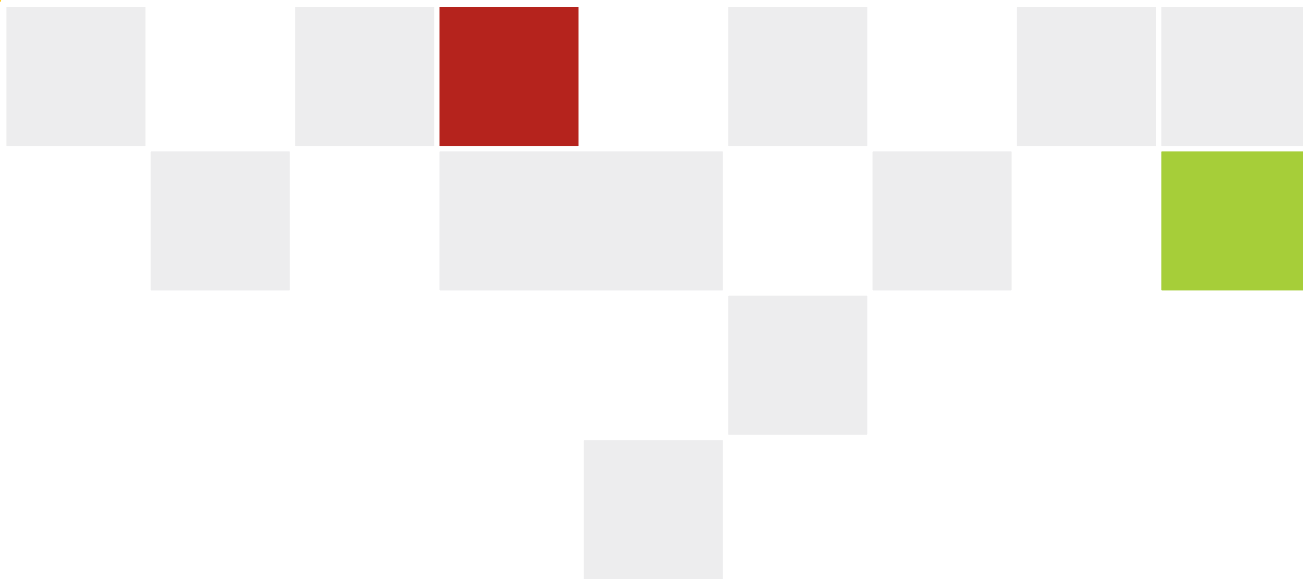


Latton Priory, Harlow

Epping Forest Local Plan – EiP Statements
Matter 1



Boyer

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MATTER 1: LEGAL COMPLIANCE

1.1 This statement has been prepared by Boyer on Behalf of CEG and Hallam Land Management in response to the Inspector’s Issues and Questions set for Matter 1 in relation to the Plan’s Legal Compliance.

1.2 Many of the Issues and questions set by the Inspector are for the Council to address. However, as promoters of the proposed Latton Priory Garden Town allocation, we have been engaged in detailed discussions with Council officers as part of the strategic masterplanning process required by the Plan for the Latton Priory allocation under Policy SP4C(v) and Policy SP5/D. Legal Compliance issues have therefore been discussed in the context of the various meetings and structured discussions held with the Council over the last few months.

1.3 Leading Counsel’s advice has also been sought on these matters and he will be in attendance at relevant stages of the Examination to assist the Inspector where appropriate.

1.4 However, we have confined our statement for this Matter to a limited number of issues and questions where we have relevant information and evidence to assist the Inspector and the Council in judging legal compliance issues.

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

Q3. Does the decision of Epping Forest District Council and/or the other Local Authorities comprising the Housing Market Area (HMA) not to meet the Objectively Assessed Need for housing as found by the Strategic Housing Market Assessment July 2017 (EB407) represent a failure of the Duty to Cooperate? What cooperation took place to seek to meet this need within the HMA?

1.5 To assess the sustainability of strategic spatial options for meeting the overall OAN within the HMA, the four west Essex/East Hertfordshire authorities, through the Co-op Member Board, jointly commissioned a ‘Spatial Optioneering’ (Spatial Options) study. We understand that this is not a single report or assessment as such but rather a process with three main components, with the overall aim of testing options for distributing different levels of growth across the HMA i.e.:

- Identifying and assessing options for the spatial distribution of OAN across the authorities
- Sustainability Appraisal of these options (carried out by AECOM)
- A Memorandum of Understanding (MoU) between the authorities setting out a high level agreement as to how OAN should be distributed across the HMA

1.6 This approach to joint working within the Housing Market Area is sound in meeting the requirements of the Duty to Co-operate and provides a well-co-ordinated and effective

approach to plan making within the area.

- 1.7 The process and output from the Spatial Options Study is reported in the previous Housing Background Paper (October 2016) and signed MoU (March 2017). We understand that the Study assessed six options that represented different levels of housing growth and its spatial distribution across the HMA, based in part on the previous SHMA Update published in August 2016. This resulted in a preferred Spatial Option, which proposed that a maximum of 51,100 homes be provided within the HMA area based on the latest demographic data available at the time, the level of infrastructure constraints and environmental and policy designations. It was agreed by the authorities that 11,400 homes would be provided in Epping Forest District.
- 1.8 However, as noted in paragraph 2.56 of the Regulation 19 Local Plan, the work that underpinned the MoU distribution focussed on the housing projections set out in the 2015 SHMA which were lower than the OAN identified in the July 2017 update. The Council accepts in paragraph 2.6 of the Housing Implementation Strategy (December 2017) that the July 2017 update figure of 12,573 represents that latest OAN for the District.
- 1.9 It is apparent from the Pre-Submission Plan and evidence base that no work has been undertaken to update the previously agreed spatial distribution across the HMA despite an increase in OAN for three of the four authorities involved, and across the HMA as a whole, compared to the distribution previously agreed in the MoU.
- 1.10 We consider it is necessary for the MoU to be updated to be more explicit about the level of OAN that is the starting point for the joint work on the distribution of the housing requirement across the HMA (i.e. the figures set out in the 2017 SHMA update). It should either increase the total planned provision and update the distribution including changes to the figures for each authority, or state clearly why it is not possible to address the OAN for the HMA as a whole.
- 1.11 We do not consider this to be a legal compliance issue, in terms of the Duty to Cooperate, if the MoU is updated in this way.
- 1.12 Similarly, the EFDC Local Plan and evidence base should be clearer about what it considers to be the OAN for the District and separate that issue from the question of the extent to which the Plan meets or fails to meet that requirement and why. If the planned level of housing provision is constrained below the District's OAN, it is important to identify the nature of that constraint as this may impact upon the distribution of housing that is to be addressed under Matter 4.

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

Q1: Is the Council's HRA process consistent with the People Over Wind, Peter Sweetman v Coillte Teoranta Judgement?

- 1.13 It is understood that the Council is reviewing this matter and we will comment further, if necessary, when we have sight of the Council's up to date position in its Hearing Statement.

Q2: 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.

Q2a: 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)?

- 1.14 This is correct. There is no published advice from Natural England (NE) for these sites in relation to concerns regarding increased recreational pressures and atmospheric pollutants. This likely reflects the acid sensitive habitats only found within Epping Forest SAC that are susceptible to degradation especially by vehicle-derived pollutants and dog faecal deposition. Hence Epping Forest SAC is likely to be the priority for intervention by NE.

Q2b: Both NE 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?

- 1.15 These are standard terms in relation to Air Quality Assessment.

Q2c: 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?

- 1.16 The question of whether policies screened out of the assessment should now fall within its scope in the light of new information about the Zone of Influence (Zol) should be addressed by the Council in the HRA process. However, this will only affect spatial policies (those that will be influenced by a change in the Zol). Further, the mitigation

measures necessary within the Zol, as may be extended, are not affected and the assessment is unlikely to change significantly.

Q2d: 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?

- 1.17 We understand that assessment and mitigation has only been undertaken at the screening stage and so requires updating within an Appropriate Assessment to confirm no AEOI on qualifying features.

Q2e: In preparing any appropriate assessment, has avoidance of harm been considered before mitigation or compensation? If not, should it have been?

- 1.18 This has been done at the screening stage and will require updating through the full Appropriate Assessment.

Q2f: 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)?

- 1.19 There are two types of SANG required. 'Buffer SANG' or buffer lands (as set out in the City of London Corporation's response to the Initial Mitigation Strategy (IMS), September 2018), within 400m of Epping Forest SAC are required and these are unrelated to development proposals. However, the second type of SANG required to mitigate specific residential development proposals, are normally required for developments over 100 units, as advised by NE (Interim advice: 20 September 2018, Ref: 259129) and can include strategic SANG (a larger area of SANG that is capable of mitigating the associated development as well as other development proposals within a defined area).
- 1.20 These types of SANG may be determined at the application stage as these are dependent on masterplan design in relation to standing NE advice (NE, 2008) on the area to be provided (normally calculated at 8ha of SANG/1,000 new residents). For example, the proposals at Latton Priory have both a SANG and strategic SANG component within the masterplan design that comply with NE guidance, hence this allocation along with others that provide in a similar way may be taken forward under current plan policies.
- 1.21 The need for and provision of SANG is under active consideration as part of the Strategic Masterplan process for major sites in accordance with the IMS and consultation with Natural England. Policy DM2 provides sufficient scope for this work to be undertaken and concluded at the masterplanning and application stages.

Q2g: 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?

- 1.22 Yes, because the mitigation strategy is a Joint Mitigation Strategy (JMS) with NE, who are technical advisors to the Habitats Regulations. NE are working with the competent authorities and landowners to agree a package of deliverable measures that will be effective in protecting the integrity of the affected sites the essential components of which are already known.
- 1.23 An Interim Mitigation Strategy (IMS) for Epping Forest Special Area of Conservation (EFDC Version 5 October 2018) has been published in relation to mitigation of recreational pressures. It is considered that this strategy is also relevant to mitigating atmospheric pollutant effects because the key measures involve reductions in vehicle traffic within the SAC.
- 1.24 There is no barrier, seasonal or otherwise, to undertaking the required transport and air pollution modelling and this should have been completed (as it was advised that it was being undertaken in June 2018). It is considered that the updated visitor survey data should not hold up publication of the Joint Mitigation Strategy (JMS) as the sole effect will be on the Zol buffer distances and not the mitigation measures themselves which are already largely drafted within the IMS.
- 1.25 We suggest that a JMS that includes appropriate levels of traffic management and other measures within the SAC (internal measures) coupled with the provision of SANG and sustainable transport measures within the Zol (external measures) would provide an appropriate and achievable ‘mix’ of mitigation measures for both recreational pressure and atmospheric pollutant adverse effects. Given that the JMS is both drafted as an IMS and readily finalized, there is no significant barrier to concluding the measures required within EFDC Local Plan HRA and in turn the EFDC Local Plan.

Q2h: 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?

- 1.26 There are two LSE/ AEOI specified as requiring specific consideration by NE (June 2018) arising from the residential development within the Epping Forest SAC Zone of Influence (Zol) and both are indirect effects: 1) recreational pressure and 2) atmospheric pollution.

Increased Recreational Pressure

- 1.27 As a rule, e.g. as applied to both the Essex Coast and Suffolk Coast Recreational Disturbance Avoidance Mitigation Strategies (RAMS), indirect recreational pressure effects alone are mitigated by the provision of SANG on site, with a standard, financial contribution to a protected site mitigation strategy to manage in-combination effects. All

proposals are required to provide SANG sufficient to meet standard NE guidelines (8ha/1000 of new population) and larger developments, such as Latton Priory, may also deliver strategic SANG for other nearby developments (Strategic SANG).

- 1.28 Visitor surveys in October and November 2017 (Footprint Ecology, 2018) demonstrated a Zol around Epping Forest SAC of 6.2km and residential developments within the Zol of Epping Forest SAC are required to carry out a project level HRA and conform to the requirements of the forthcoming JMS. NE interim advice (September 2018) conforms to this general strategic approach in relation to SANG and indicates that developments of >100 units should provide SANG in accordance with standard guidelines.
- 1.29 The Interim Mitigation Strategy (IMS) for Epping Forest Special Area of Conservation (EFDC Version 5 October 2018) suggests no per unit financial contribution is proposed from residential developments outside of the three core districts (Epping Forest, Waltham Forest and Redbridge) with a requirement within the wider Zol area solely for the delivery of sufficient SANG. Where required, to mitigate in-combination effects a financial contribution to the JMS may be agreed in principle for developments. Hence no Adverse Effects on Integrity (AEOI) from recreational pressure effects on Epping Forest SAC on qualifying features may be safely concluded within project level HRAs and this may be agreed with NE and Local Planning Authorities (LPA) now, noting the need for formal agreement on a minimum area of SANG within every masterplan and, if required, a commitment to a financial contribution to an Epping Forest SAC JMS.

Increased Vehicle-Derived Atmospheric Pollutant Pressure

- 1.30 As demonstrated above for recreation pressure effects, effects in isolation are dealt with by site-based measures and in-combination effects are normally dealt with by a proportionate financial contribution to a European site avoidance strategy agreed between NE and the relevant LPA, to enable better management of the qualifying site features of the protected site. Measures to reduce vehicle-derived, pollutant burdens from new residential developments would be expected to adopt the same strategic approach through:
- Project-level measures - by promoting avoidance of vehicles polluting Epping Forest SAC and use of pollutant-free vehicles and improved public transport in new developments so that visitor pressure by polluting vehicles is reduced.
 - Measures within and adjacent to Epping Forest SAC - by closing roads permanently or temporarily within Epping Forest SAC; providing recreational buffer lands near the SAC; and improving cycleways and footpaths.
- 1.31 The IMS states that in relation to managing recreational pressure there will be 'traffic control and car impact reduction measures and monitoring, as part of an Integrated Forest Transport Strategy (including physical management of car parks). This would be a directly relevant 'within SAC' measure for enabling atmospheric pollutant reduction; the two pressures are closely linked in terms of effective traffic-related responses.

1.32 Residential development proposals within the Zol should include a range of project level atmospheric pollutant reduction measures. The outline package of mitigation measures below will help to achieve this:

- The provision of SANGS at developments >100 units will provide an alternative destination to Epping Forest SAC with direct benefits in a reduction of both atmospheric pollutant levels as well as recreational pressures.
- Preparation of a sustainability plan that provides or promotes pollutant free vehicle travel:
- Provision of information on atmospheric pollution issues at Epping Forest and measures to reduce it when visiting such as car sharing and use of electric/hybrid vehicles;
- Provision of electric/hybrid bus travel for residents with links to rail services;
- Provision of support for hybrid/electric cars for residents; and
- Provision of sufficient electric car points.

1.33 Hence no AEOI for residential developments may be concluded following agreement on project-level measures coupled with a commitment, if required, to a financial contribution to deliver measures within Epping Forest SAC if this is required under the JMS.

EFDC Local Plan Delivery

1.34 A revision of the EFDC Local Plan HRA is stated to be dependent on the gathering of further baseline information for the Joint Mitigation Strategy (JMS) as set out in NE published advice (Letter 16 June 2018, Ref 247581) including:

- Visitor Survey assessment (undertaken by Footprint Ecology in summer 2019)
- Updated transport and air pollution modelling
- Identification of proposed mitigation measures to address recreational and air pollution impacts
- Updated conclusions on whether there will be any adverse impacts, either alone or in-combination.

1.35 The IMS has been published in relation to mitigation of recreational pressures; it is considered that this strategy is also relevant to mitigating atmospheric pollutant effects as well. There is no barrier, seasonal or otherwise, to undertaking the required transport and air pollution modelling and this should have been completed. It is considered that the updated visitor survey data should not hold up publication of the JMS as the sole effect will be on the Zol buffer distances and not the mitigation measures themselves which are already largely drafted within the IMS.

1.36 We suggest that a JMS that includes appropriate levels of traffic management and other measures within the SAC (internal controls) coupled with the provision of SANG and sustainable transport measures for proposed developments within the Zol (external

controls) would provide an appropriate and achievable ‘mix’ of mitigation measures for both recreational pressure and atmospheric pollutant adverse effects. Given that the IMS is both drafted and readily finalized, there is no significant barrier to concluding the EFDC Local Plan HRA and in turn the EFDC Local Plan.

- 1.37 The proposals at Latton Priory deliver a model project for consideration of the LSE and associated mitigation measures of large scale residential development located within the ZoI of Epping Forest SAC. The Latton Priory proposals provide mitigation measures to manage likely increases in both recreational pressures, including a significant area of SANG/ strategic SANG located between Harlow and Epping Forest SAC (enabling effective reduction of recreational pressure increases on Epping Forest), as well as atmospheric pollutants (SANG and comprehensive on-site transport sustainability measures and potential financial contribution). These measures provide a means to conclude no AEOI on qualifying features of Epping Forest SAC.

Q2i: 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?

- 1.38 If the mitigation is to support the conservation objectives of a designated site then the requirement for HRA does not apply under the legislation. The JMS will consider all repercussions from its measures and deliver the best mitigation package that is possible.

Q2j: 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?

- 1.39 Yes, that would be logical and reasonable.

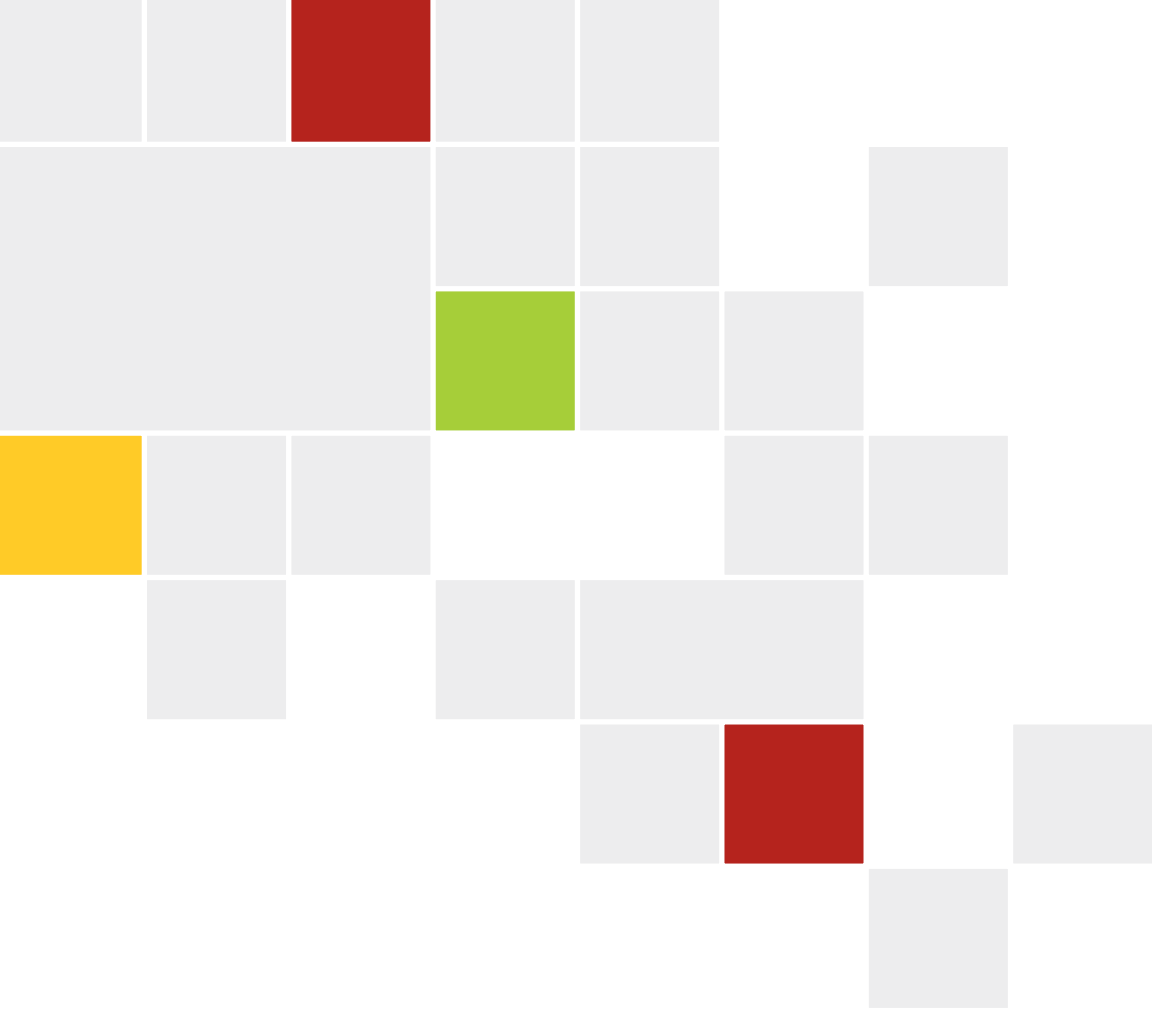
ii. Would this course of action be justified and effective, or is it essential for the Strategy to be completed before the Plan is adopted? Is it clear that the necessary mitigation could be implemented without threatening the delivery of the Plan’s strategy?

- 1.40 No it is not essential for the strategy to be completed before the Plan is adopted. The plan may refer to the JMS and ensure measures will accord with it, noting there is no barrier to publishing an agreed JMS or updated IMS at this time.

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 NE [19STAT0027] and the Conservators of Epping Forest [19STAT0035]).

- 1.41 The mitigation strategy is not required to be published to enable the plan to be completed and the HRA of the plan to be compliant and demonstrate no AEOI. There is sufficient

interim guidance published regarding mitigation to enable the plan to be completed and demonstrate no AEOI.



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