

Statement for the Epping Forest District Local Plan Examination

Matter One: Legal Compliance

Prepared For
**Loughton Residents
Association**

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CHARTERED TOWN PLANNERS

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1 INTRODUCTION

- 1.1 We enclose representations to Matter 1, Legal Compliance, of the Epping Forest District Local Plan Examination on behalf of our client the Loughton Residents Association (LRA).
- 1.2 We have limited our response to the key issues of relevance to our client.
- 1.3 We understand that the Plan is being examined under the transitional arrangements, meaning that the relevant national policies are set out in the National Planning Policy Framework (NPPF) of 2012. Where appropriate, we have also referred to updated National Policy as set out in the NPPF of July 2018.
- 1.4 Loughton Residents Association is a very active group of local residents who care for Loughton and its environment. Their membership is around 1,000 households, and they have been in existence for nearly 40 years. They are independent of any political party. They seek, and listen to, the views and concerns of Loughton residents and take action in support. They have a majority of the councillors on the Loughton Town Council, and councillors on Epping Forest District Council & Essex County Council. They have their own regular printed and email newsletters to residents, their own website (www.LoughtonResidents.org.uk) and their own Twitter and Facebook sites.



2 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

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

RESPONSE TO ISSUE 1

- 2.2 Yes. We wish to draw the Inspector's attention to a specific conflict with national policy as set out in the NPPF.



LANDSCAPE AND LANDSCAPING

 Urban open spaces LL5, LL6

- 2.3 Jessel Green (proposed allocation LOU R5) was specifically set aside as public urban open space by the London County Council (LCC) when they developed the estate in the 1940s. Our clients



have recently obtained a map of 1948 that demonstrates this; and in explanatory text adds that the LCC added a further 6 acres of level ground to make it fit for ball games.

- 2.4 The site is also allocated as an urban open space in the existing development plan for Epping Forest District (the Epping Forest District Council Combined Policies of Epping Forest District Local Plan (1998) and Alterations (2006)). For ease of reference we copy the relevant development plan policies below.

POLICY LL5- PROTECTION OF URBAN OPEN SPACES

The Council will not grant planning permission for development which would result in either:

- (i) the total loss of; or
- (ii) any excessive adverse effect upon,

any urban open spaces (including those identified as such on the Proposals Map) which contribute, or have the potential to contribute, significantly to the amenity of the locality.

POLICY LL6- PARTIAL DEVELOPMENT OF URBAN OPEN SPACES

In granting planning permission for partial development of any area of urban open space (including those identified on the Proposals Map) the Council will need to be satisfied that:

- (i) the predominantly open nature of the remainder of the site is retained; and
- (ii) the scheme provides for the appropriate management of the remainder of the site to enhance its:
 - (a) visual importance; and/or
 - (b) nature conservation interest; and/or
 - (c) recreational potential.

Where the development involves playing fields, policy RST14 will also apply.

- 2.5 The National Planning Policy Framework (2012) makes it clear (paragraph 74) that existing open space should not be built on unless there are specific circumstances to justify its loss. These include an assessment showing that the open space is surplus to requirements, or the loss being replaced by equivalent or better provision in terms of quantity and quality in a suitable location or the development being for alternative sports and recreational provision, the needs for which clearly outweigh the loss. The updated NPPF from 2018 contains similar wording, without any weakening of the position. The new paragraph is clearer than the 2012 version in that it replaces bullet points in the 2012 version with the word or, indicating that at least one of the lettered options must be met.



- 2.6 Paragraph 7.11 of the Epping Forest District Council Open Space Strategy states that “..Loughton has adequate levels of Amenity Greenspace which are likely to be maintained until the end of the plan period”. Paragraph 13.7 goes on to set out that “It will be necessary to consider the creation of new areas of Amenity Greenspace in light of population increases to the end of the plan period in 2033”. Recommendation 6 of the Open Space Strategy is that “The level and quality of Amenity Greenspace should be monitored in Loughton”.
- 2.7 We note that the Open Space Strategy was produced before the introduction of the new housing method which show higher numbers for Epping Forest District which would indicate an increased requirement for Amenity Greenspace which has not been taken into account by the Plan.
- 2.8 We have not seen any evidence (as required by paragraph 74 of The National Planning Policy Framework (2012)) to justify the loss of open space (which has varied in different iterations of the Plan and is now approximately 50% of the site as a whole) that will result from the allocation of Jessel Green for residential development. There is no evidence that the quantum of open space will be replaced by equivalent or better provision. We therefore conclude that the submission Plan is unsound due to a specific conflict in regard to this aspect of national policy.



3 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?

- Has the Plan been prepared in accordance with the adopted LDS, October 2017?
- (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?

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?

RESPONSE TO ISSUE 2

- 3.1 We have some specific points to raise in response to the issues raised by the Inspector.
- 3.2 The process of preparation of a Local Plan should be a transparent and iterative process which is clearly based on the outcomes of a robust evidence base and is informed by the outcomes of public consultation. The evolution of the Plan should be evidenced by an audit trail, rather than being a confused exercise. Paragraph 155 of NPPF (2012) states that, in regard to plan making "early and meaningful engagement and collaboration with neighbourhoods, local organisations and businesses is essential. A wide section of the community should be proactively engaged".
- 3.3 In this case there do appear to have been some errors in process.



- 3.4 Building on Jessel Green was first proposed by the Council in 2008; however, the proposal was withdrawn after an outcry by residents and local councillors. The site was not included within the Community Choices Issues and Options consultation documents from 2012 (EB131). We have explored the consultation feedback (EB100 and EB100A) and there is no suggestion within this that there was a desire for open spaces to be built upon. To the contrary, the feedback (paragraph 152) was that preservation of green space should be of higher importance to the Council. The summary on this matter set out within EB100A states that “A large volume of criticism said the Council was suggesting the removal of open space and other facilities, rather than ensuring protection and maintenance”. It is unclear, therefore, how this consultation outcome was taken on board by the Council.
- 3.5 The Council’s Regulation 22 Consultation Statement is a submission document. This sets out what comments have been received during the consultation on the emerging Local Plan. Regulation 22 of the Town and Country Planning (Local Planning) (England) Regulations 2012 sets out (part iv) that this statement must explain how the representations have been taken into account.
- 3.6 We cannot see any such explanation in the Council’s Regulation 22 Consultation Statement. For example, the Statement summarises (paragraph 4.10) where there were either a notable number of responses or where recurring issues were raised. This includes the responses to LOU.R5, where a very large proportion of respondents objected to the allocation of the site for housing, citing the impact on open space provision in the settlement. There was also a petition against the allocation of this site for development, which included a very significant number of signatures (over 4,600 at the time, which increased to 5579 signatures when the petition closed).
- 3.7 There is a bland reference at paragraph 3.18 of the Regulation 22 Statement which states that “all comments that were received from the range of stakeholders were taken into account in the preparation of the Submission Plan”. However, this does not explain ‘how’ the representations have been taken into account, it merely states that they have. We cannot see any evidence to show how the Council has considered the comments made. This Plan must therefore be flawed in regard to Regulation 22.
- 3.8 The absence of key documents at the Regulation 19 stage is an important issue. In response to the Inspector’s question regarding the SCI, paragraph 29 of the SCI states that at the Regulation



19 stages 'Any representations should be based on why the document is unsound and the changes that are needed to make it sound'.

- 3.9 It is not possible to make comments in this regard without having all of the documents that have informed the Regulation 19 version of the Local plan available. Whilst we are aware of the outcomes of the CK Properties Court Case, we consider that the Inspector's question cannot be separated from the tests of soundness – the 2012 NPPF sets out that one of the tests of soundness is whether or not the Plan is justified in terms of being "...the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence". If the evidence is not available, then participants must be prejudiced in terms of making assessments regarding soundness. The key issue for the Inspector to assess is what documents were required to be available for consultation and whether the absence of any document gives rise to a breach of section 20.



4 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?

RESPONSE TO ISSUE 4

- 4.1 The overall aim of the Sustainability Appraisal process is to consider ways in which the plan can contribute to improvements in environmental, social and economic conditions. Our response focuses on issues which include the evaluation of ‘reasonable alternatives’ through the Sustainability Appraisal as a whole which would help to achieve sustainable development. We start with submission document EB203 – the Sustainability Appraisal of Strategic Spatial options for the West Essex and East Hertfordshire Housing Market Area. This was published in 2016 and considered spatial options to deliver houses across the Strategic Housing Market Area with the aim of (section 1.2) “determining the most appropriate housing growth and distribution option for the HMA”. This includes potential housing numbers for the different parts of Epping Forest District.
- 4.2 Whilst we understand the rationale for the testing of the varying housing numbers, we cannot see any justification for the specific distribution of the housing numbers within Epping Forest District. All of the options for Loughton propose high numbers of between 892 and 1101.
- 4.3 The SA (Table 3.1) raises the issue of recreational pressure which could result in adverse effects on the Epping Forest SAC from growth in settlements within Epping Forest District including Loughton and makes the bland statement that “more detailed visitor survey work may be required”. The SA goes on to set out that following the completion of the visitor survey work “strategic mitigation solutions may follow” (our emphasis).
- 4.4 Given the complete uncertainty regarding whether or not there is an appropriate solution to this issue regarding additional recreational pressure on the Epping Forest SAC, the SA should, at this strategic level, considered alternatives to development options that had the potential to result in adverse effects on the Epping Forest SAC. There are different spatial options available and the SA does not, therefore, consider realistic reasonable alternatives and is flawed in this regard.



- 4.5 A reasonable alternative would have been to restrict development in the vicinity of the Epping Forest SAC, to ensure no adverse effects. There is no justification as to why this option has not been considered and assessed. Reasonable alternatives should be identified and considered at an early stage in the plan making process, so that the assessment of these informs the local planning authority in choosing its preferred approach.
- 4.6 Submission Document EB202 (Sustainability Appraisal of the Epping Forest District Local Plan) then appraises five options which includes option 4, lower growth at urban greenspaces. This document is based on the conclusions of the earlier SA on strategic spatial options (EB203).
- 4.7 We are not aware of any specific justification for the numbers of homes allocated to Loughton in any part of either the Sustainability Appraisal or any other part of the Council's published evidence base. There is merely a reference to the number having been informed by an aspiration for it to continue to be a major town; however, it is unclear what evidence lies behind this aspiration, or what reasonable alternatives have been considered. We do not know if this spatial distribution is based on anything tangible; for example, population or area.
- 4.8 This conclusion regarding the overall numbers for Loughton has the knock-on effect of influencing how the five options set out in the Sustainability Appraisal of the Epping Forest District Local Plan have been assessed. For example, whilst a proper consideration of option 4 (lower growth at urban greenspaces) could have resulted in the removal of the Jessel Green site from the Plan, this was only assessed in the context of the decision regarding the overall numbers for Loughton. The conclusion is that this option could 'result in a need to divert growth to locations on the edge of Loughton (in order to avoid unreasonably low growth at the town) that are sensitive in terms of flood risk and/or biodiversity'. There was no opportunity to re-assess the numbers for Loughton.
- 4.9 Paragraph 10.5.2 of EB202 does not properly reflect the outcomes of the Council's evidence base in respect of open space. Paragraph 10.5.2 states that "There are concerns about the loss of areas of existing open space; however, an assessment has shown that.....there will continue to be sufficient urban open space to meet local needs, as...proposed allocations will retain an existing element of open space".
- 4.10 On the same matter, para 10.5.11 states that "...it is not clear that the local community will be significantly disadvantaged as there is good provision within the settlements and access to the



wider green infrastructure network”. However, this assertion is not a satisfactory justification of the Council’s action. Paragraph 74 of the National Planning Policy Framework (2012) requires the Council to carry out an assessment (as mentioned in paragraph 2.5 of this Statement) – the Council has not done so.

- 4.11 The SA is misleading in this regard. What the Council’s Open Space Strategy (Paragraph 13.7) concludes is that “it will be necessary to consider the creation of new areas of Amenity Greenspace in light of population increases to the end of the plan period in 2033”. Recommendation 6 of the Open Space Strategy is that “The level and quality of Amenity Greenspace should be monitored in Loughton”.
- 4.12 The conclusions of the SA in regard to air quality state that “less development within Loughton could help to reduce impacts on local highway infrastructure in an area where there are existing congestion and air quality issues...”. However, this conclusion does not influence the content of the Plan. It would have been a reasonable alternative to reconsider the spatial distribution given this conclusion.
- 4.13 EB204 is the Sustainability Appraisal (incorporating Equalities Impact Assessment) dated December 2017. This set out to explore further reasonable alternatives, which were alleged to be based on consultation responses and updated evidence. Despite the large number of objections to the allocation of Jessel Green for residential development, however, this did not result in any changes to the approach to Loughton.
- 4.14 EB204 (para 5.10) sets out that despite Loughton’s size, it is very constrained and therefore has limited capacity for development. It therefore appears that the Council has made the decision to allocate LOU R5 based on the size of Loughton rather than it being a suitable site for development. A reasonable alternative would, given the accepted constraints, be to reduce the overall quantum of development to Loughton.



5 ISSUE 5

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

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

RESPONSE TO ISSUE 5

- 5.1 No. We have assessed that the HRA process is not consistent with this Judgement. In terms of the Council's HRA, this was published in December 2017 and therefore pre-dates the Judgement. It appears, therefore, to be fundamentally out of date. Whilst it refers (para 5.24) to the strategic mitigation strategy for Epping Forest SAC, this has not yet been produced, therefore there is no evidence that the necessary mitigation can be provided. The Plan is procedurally flawed in this regard – it is simply wrong to form a conclusion based on a mitigation strategy which has not been produced as it is not known if the necessary mitigation can be achieved.
- 5.2 The loss of the open space of site LOU.R5 (Jessel Green) is recognised within the HRA as resulting in “an increase in recreational pressure upon the SAC, which is then compounded by the provision of an increase in net new dwellings” (para 5.31).
- 5.3 The *People over Wind* case states, in summary, that it is no longer appropriate for a policy in a plan to say that future development might be acceptable subject to those proposals fully considering and putting in place appropriate mitigation measures. Rather, if it is thought that a policy might lead to a development requiring mitigation measures to be put in place, then those mitigations need to be fully considered at the plan-making stage. *Sweetman* goes even further. It points out robustly that Article 6 of the Habitats Directive contains no reference at all to mitigation being acceptable, and "mitigation" may amount to circumvention by what are effectively bogus means of the procedure laid down in Article 6(3)
- 5.4 These mitigations have not, and because of the timing cannot have been, considered at the plan making stage, on the basis that development in the vicinity of the Epping Forest Special Area of Conservation (EFSAC) must impair the SAC, because of the effects of increased footfall on the soil of the SAC, and the negative effects of the new inhabitants' vehicles on air pollution (the



fragile environment of the SAC and the effects on it of NOx and particulate pollution is well documented. The housing allocations are concentrated around Epping Forest, with around 6,000 houses projected to be provided within less than 5km of Epping Forest Land (including the SSSI area) and within less than 6.2km if Epping Forest SAC boundaries. The Habitats Directive process has therefore not been embedded into the Local Plan making process, and thus we contend that the Submitted Local Plan is **defective** in this aspect of compliance with the law.

- 5.5 The specific recommendations of the HRA in regard to the Epping Forest SAC are weak and merely state (para 5.39) that “...all allocations above a certain size (such as for more than 400 dwellings) in the core catchment of the SAC and particularly the settlements of Loughton.....should consider any potential to deliver their own on-site accessible natural greenspace.....”. This appears very weak and inconclusive and does not even seek to consider the impacts of the smaller allocations in-combination.
- 5.6 It is admitted that a plan or project may "still be carried out for **imperative reasons of overriding public interest (IROPI)** under Article 6(4)" as long as compensatory measures are considered and adopted. But in this case of the Examination of a Local Plan, no IROPI is involved, in that the Council has the option to accommodate the District’s necessary development away from the EFSAC, for instance in the NE quadrant of the District. This would have been a reasonable alternative in order to apply with the Directive to explore further through the Sustainability Appraisal process. The published evidence base does not indicate that the Council has considered a location for extra development in this quadrant, which is well placed to contribute to the economic growth of the Chelmsford area, especially if a new western by-pass and park and ride for that city is contemplated. The capacity of the Garden Town developments could also be maximised rather than restricted; we understand from the agents for the developers for Latton Priory that there is additional capacity and no evidence has been submitted as to why greater numbers for the Latton Priory and other garden town sites are inappropriate. These proposed developments are sufficiently distant from the SAC so as to minimise any harm to it. This relates to our concerns above regarding the Council’s spatial strategy and the evidence for it, which we will return to in our responses to other matters.
- 5.7 "Distant" in this context must encompass three aspects:



- Sufficiently far from the Epping Forest SAC to ensure that additional compaction of soil and greater damage to flora and fauna are not exacerbated by greater routine footfall by new residents and their animals
- Sufficiently distant from the SAC to ensure that greater pollution from PM and NOx pollution does not cause significant harm to the fragile ecosystem of the SAC
- Sufficiently distant to ensure that extra traffic generated by residents of new housing does not export extra pollution from the location of that development to the road system of the SAC.

5.8 We also contend that the transport aspects of the Local Plan, which have identified greatly increased usage of junctions by motor traffic actually within the SAC (for instance, the Robin Hood and Wake Arms roundabouts, the A1069/A104/Manor Road junction, and the B1393 Bell Common junction, which is *already* an Air Quality Management Area (AQMA)) are also relevant to the consideration of this issue. The thought that mitigation could be assured by the imposition of a levy of a few hundred pounds per dwelling within 3.1/6.2km is, in our opinion frankly risible in the context of the two ECJ judgments. "Mitigation" is simply unacceptable as a concept. And there is no guarantee that any "mitigation" would be carried out nor maintained in the lifetime of any development near the SAC.