

EXAMINATION OF THE EPPING FOREST DISTRICT LOCAL PLAN – 2011 – 2033

EXAMINATION STATEMENT ON BEHALF OF THE EPPING FOREST HOUSING FORUM

Matter 1 – Legal Compliance

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Matter 1 – Legal Compliance

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1.0 Introduction

- 1.1 This Examination Statement provides a response on behalf of the Epping Forest Housing Forum ("the Forum"), to those Questions raised by the Inspector (dated November 2018), relating to the Legal Compliance of the Epping Forest District Local Plan 2011 – 2033 ("the Plan") and its supporting evidence base.
- 1.2 This Statement has been prepared by Neame Sutton on behalf of the Forum

2.0 Matter 1 – Legal Compliance

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

Question 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). Has the Duty to Cooperate been met in respect of these matters and are there any significant omissions?

- 2.1 The Forum has a specific concern in relation to the Duty to Cooperate ("DTC") regarding the approach taken to dealing with the housing requirement in the Plan. In relation to this specific matter the Forum considers that there is a failure in the DTC as explored in relation to Questions below.

Question 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 (OAN) 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?

- 2.2 In deciding not to meet the full OAN for the HMA, the Council has not only failed to comply with the requirements of Paragraph 47 of the Framework 2012; it has also failed in the DTC.
- 2.3 The July 2017 SHMA (EB407) identifies a need of a minimum of 51,700 dwellings across the HMA, with a minimum of 12,573 dwellings for Epping Forest. Notwithstanding this the Council proposes a housing requirement of 11,400 dwellings in the Plan, which falls short of the OAN by 1,173 dwellings.

- 2.4 The constituent authorities within the HMA have all signed a Memorandum of Understanding ("MoU") that agrees they will all fail to meet the OAN identified for the HMA. In other words by signing the MoU for the entire HMA to fail in its obligation under the requirements of Paragraph 47 of the Framework 2012 the Councils collectively consider they have met the requirements of the DTC. This cannot be right.
- 2.5 Section 33A of the Planning and Compulsory Purchase Act 2004 provides that the duty to cooperate, where it applies, requires cooperation "in maximising the effectiveness with which" development plan documents are prepared. Maximising the effectiveness of a development plan document involves pursuing the correct aims. The effectiveness of plans which deal with the supply of housing are to be judged, at least in part, by their ability to meet objectively assessed needs for housing. As Lindblom J observed in *Grand Union Investments Ltd v Dacorum BC* [2014] EWHC 1894 (Admin), at para. 57 the first limb of the soundness test in the NPPF, concerning positive preparation "will be satisfied if the plan has been based on a strategy that "seeks to meet" the local authority's "objectively assessed" requirements for development and infrastructure".
- 2.6 The duty to comply with the duty to cooperate is "active and ongoing": *R (St Albans City and District Council) v SSCLR* [2017] EWHC 1751 (Admin), para. 38. The Council accepts as much in its Legal Compliance Checklist of May 2018 (EB124), pp.8-9.
- 2.7 The MoU was not revisited following the update to the SHMA in July 2017 (EB407). The total figure for housing in the MoU does not reflect the figure for the HMA as set out in the most recent version of the SHMA (notwithstanding the Forum's position that even this figure is too low). The List of Submission Documents (EB130), dated September 2018, records the most recent Cooperation for Sustainable Development Board Member Meeting as 9 October 2017. This does not reflect active and ongoing cooperation, particularly in circumstances where there has been an increase in the OAN figure in the SHMA.
- 2.8 The Framework 2012 sets out a clear duty for LPAs to cooperate on planning issues that cross administrative boundaries, particularly where they relate to strategic priorities. Paragraph 156 states that LPAs should set out these strategic priorities in their Local Plans, including strategic policies to deliver, amongst others, the homes and jobs needed in the area. Paragraph 178 is clear that the Government expects joint working on areas of common interest, in this case housing need, to be diligently undertaken for the mutual benefit of neighbouring authorities. This cannot include reaching an agreement to fail.
- 2.9 Furthermore the NPPG advises that:
- 'Local planning authorities will need to satisfy themselves about whether they have complied with the duty. As part of their consideration, local planning authorities will need to bear in mind that the cooperation should produce effective and deliverable policies on strategic cross boundary matters.'*
- (Paragraph: 001 Reference ID: 9-001-20140306)

- 2.10 Paragraph 179 requires LPAs to work collaboratively to ensure that the strategic priorities across administrative boundaries are coordinated and clearly reflected in their Local Plans. This paragraph goes on to reinforce joint working to meet development requirements that cannot be wholly met within the LPA area, encouraging joint planning policies on strategic issues.
- 2.11 Importantly, Paragraph 181 expects LPAs to demonstrate that they have effectively cooperated to plan for the impact of cross-boundary issues when Local Plans are submitted for examination. This paragraph highlights that cooperation should be a continuous process of engagement, which results in a final position, where plans are in place to provide necessary land to support both current and future development.
- 2.12 The approach taken by the Councils in the MoU has failed all of these requirements in the Framework 2012 and the NPPG.
- 2.13 This failure is more than just a breach of national policy, S33A of the Planning and Compulsory Purchase Act 2004 (As Amended) makes it a legal requirement for the Council to comply with the DTC particularly in the pursuit of sustainable development or use of land that would have a significant impact on at least two local planning authorities¹.
- 2.14 The Council is seeking to hide behind the fact that it has completed an MoU with all other LPAs in the HMA and that on the basis they have all agreed to fail to meet the full OAN for the HMA that the DTC has been complied with. It is clear that for the DTC to be complied with (as directed by the Framework 2012) the Council must work constructively and proactively with neighbouring authorities to meet the full objectively assessed need in the housing market area. This has plainly not happened.
- 2.15 Furthermore the constituent authorities within the HMA have failed to deal with the very real and present prospect of unmet need arising from neighbouring London Boroughs. As demonstrated by the Forum's Matter 3 Statement the potential for unmet need arising from London is substantial both in overall terms (set against the OAN identified for the new London Plan) and in the context of the three closest neighbouring London Boroughs (particularly Redbridge that has already adopted a Local Plan well below the new London Plan housing target).
- 2.16 Insufficient regard has been had to London and in fact none of the neighbouring London Boroughs are a party to any of the MoUs that have been completed. Co-operation does not appear to have been demonstrated with London Boroughs regarding meeting their unmet need. This alone demonstrates the disregard for this important strategic matter that directly affects more than two local planning authority areas.

¹ S33A(4)(a) Planning and Compulsory Purchase Act 2004 (As Amended)

2.17 There have been a number of cases in recent years where a Council has failed the DTC specifically in relation to housing matters. As an example in August 2016 the Inspector appointed to examine the St Albans Local Plan concluded that it had failed the DTC particularly in relation to housing matters raising similar concerns to those highlighted by the Forum in relation to this Plan, namely the Plan consciously failing to meet the OAN identified in the SHMA. A legal challenge to this decision failed (*R (St Albans City and District Council) v SSCLR* [2017] EWHC 1751 (Admin)).

2.18 In order to rectify this key legal compliance issue the Council needs to address the shortfall in the HMA and the lack of consideration to the need arising from London. These housing need issues are quantified in the Forum's Matter 3 Statement.

2.19 In *R (CK Properties (Theydon Bois) Ltd v Epping Forest District Council* [2018] EWHC 1649 (Admin), Supperstone J considered the failure on the part of the Council to publish Appendix B to the Site Selection Report. He held at para. 86:

'There is in my view no real likelihood of the Inspector refusing to take into account additional representations made by interested persons in relation to Appendix B after that appendix was made available by the Council (so long as they do so without undue delay).'

2.20 At para. 91, he restated:

'I consider it highly unlikely that he will refuse to have regard to timely representations made by the Claimant now it has had sight of Appendix B.'

2.21 The Forum respectfully requests that the Inspector take into account any such representations which were made.

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?

Question 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?

2.22 The Forum is concerned that the SA (EB204) does not appear to have assessed the reasonable alternative of meeting the full OAN for the District. Whilst a series of growth options are referenced in Paragraph 6.14 on Page 18 this is in the context of the Strategic Spatial Options Study and does not amount to the SA testing a reasonable alternative for either the plan area or this Plan. The SA the accompanied the Strategic Spatial Options Study (EB203) did test a higher figure for the District but this was set against a context of a lower OAN both for the District and the HMA. No assessment appears to have been undertaken in relation to the current OAN for the District and HMA that is identified for the purposes of the Plan now. Table 6.2 on Page 27 confirms that the reasonable alternatives considered in the SA for this Plan all revolve around variations to the dispersed pattern of development to deliver the same headline housing requirement of 11,400 dwellings i.e. below

the OAN identified in the SHMA. None of the reasonable alternatives considered in the SA look at meeting the OAN in full.

- 2.23 Paragraphs 7.6 and 7.7 on Page 31 and 7.28 on Page 36 confirm that no consideration has been given by the Council in the SA to meeting the full OAN. Instead reliance is placed on the Strategic Spatial Options for the HMA as a whole as providing sufficient analysis to enable the Council to proceed without considering meeting the full OAN as a reasonable alternative. This cannot be right. The Council's own position was that the OAN figure for the HMA increased. The fact that it had previously assessed a higher figure is not the point: the point is that the OAN figure has increased. That a figure represents the OAN gives it especial significance. Meeting the full OAN figure should have been assessed.
- 2.24 In the Forum's view this is a failing of the SA process and a key deficiency that needs to be rectified before the Plan can be considered properly in the Examination. Without understanding the SA implications of meeting the full OAN within the Plan the Council and, indeed the Inspector, does not have sufficient evidence to determine whether meeting the full OAN is a better or worse option to the current approach set out within the Plan.

3.0 Changes Sought

- 3.1 The Forum seeks the following changes to the Plan:
1. The Council needs to address the shortfall in housing that will arise within the HMA and deal with the unmet need that will inevitably flow from the neighbouring London Boroughs in order to meet the requirements of the DTC, particularly the advice within the NPPG and the Framework 2012; and,
 2. The SA needs to at least test the reasonable alternative of meeting the full OAN identified in the SHMA for the District but should also consider meeting a higher level of housing to address unmet need arising from within the HMA and the neighbouring London Boroughs.
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