

**EPPING FOREST DISTRICT COUNCIL: Examination of the District Local Plan, 2011 – 2033**



CAMPAIGN TO PROTECT RURAL  
ESSEX  
President: Lord Lieutenant of Essex  
Chairman: David Knight  
Vice Chairman: Patricia Moxey

RCCE House  
Threshelfords Business Park  
Inworth Road  
Feering  
Colchester CO5 9SE  
Tel/Fax: 01376 572023

Email: [office@cpre-essex.org.uk](mailto:office@cpre-essex.org.uk)  
Web: [www.cpressex.org.uk](http://www.cpressex.org.uk)

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**PRE-HEARING STATEMENT ON BEHALF OF CPRE**

**MATTER 15 – PLACES**

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## MATTER 15: Places

### Issue 1: Are Policies P1-P15 justified, effective and consistent with national policy? *Generally*

1. The following general points set out general reasons why the Local Plan Policies P1-P15 are not justified, effective or consistent with national policy and likely to be subject to successful legal challenge.
2. A large number of potential development sites included in the Local Plan are currently designated as Green Belt. The Ministerial foreword in the 2012 NPPF states: *“Our natural environment is essential to our wellbeing, and it can be better looked after than it has been. Habitats that have been degraded can be restored. Species that have been isolated can be reconnected. Green Belt land that has been depleted of diversity can be refilled by nature – and opened to people to experience it, to the benefit of body and soul.”*<sup>1</sup>
3. In relation to the Green Belt the NPPF presumption in favour of sustainable development applies unless there are specific policies that indicate development should be restricted, for example, those policies relating to land designated as Green Belt<sup>2</sup>. This was reinforced in the judgement from the Redhill Aerodrome appeal: *“Thus, far from there being any indication that placing the presumption in favour of sustainable development at the heart of the Framework is intended to effect a change in Green Belt policy, there is a clear statement to the contrary.”*<sup>3</sup>
4. The Green Belt policy of the NPPF states: *“Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances”*<sup>4</sup> and *“When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.”*<sup>5</sup>
5. According to the Adopted Local Plan the Local Authority will refuse planning permission for development on Green Belt where it is: *“conspicuous from within or beyond the Green Belt which would have an excessive adverse impact upon the openness, rural character or visual amenities of the Green Belt”*<sup>6</sup> or that which: *“could prejudice the historic nature and wildlife value of Epping Forest (identified on the Proposals Map) or its function as open space for the*

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<sup>1</sup> NPPF, Ministerial foreword by the Rt Hon Greg Clark MP, Minister for Planning, 2012

<sup>2</sup> National Planning Policy Framework, 14, footnote 9

<sup>3</sup> Redhill Aerodrome Ltd v SSCLG [2014] EWCA Civ 1386, (34)

<sup>4</sup> National Planning Policy Framework, paragraph 87

<sup>5</sup> National Planning Policy Framework, paragraph 88

<sup>6</sup> Epping Forest District Local Plan 1998 and Alternations 2006 (published 2008) Policy GB7A

*purposes of public enjoyment.*”<sup>7</sup> These issues remain as material considerations which have not been addressed in the Local Plan.

6. Furthermore, the Adopted Local Plan provides that very special circumstances (which would outweigh the harm to the Green Belt) will not apply where they conflict with other relevant Plan policies including: “*design (Policies DBE1 and DBE4), landscape (Policies LL2 and LL3), landscaping (Policies LL10 and LL11), car parking (Policy T14) and traffic impact (Policy T17).*”<sup>8</sup>
7. The Local Plan seeks to remove sites from Green Belt and thus circumvent the usual tests for very special circumstances assessment. Courts have held that the very special circumstances assessment connotes a qualitative rather than quantitative test. The overall benefits of the proposal constituting very special circumstances must be compared against the overall harm resulting from the development<sup>9</sup>. The Local Plan does not adequately make the case for very special circumstances that would normally be required.
8. It is a matter of law that any person or body engaged in any function related to local development documents “*must exercise the function with the objective of contributing to the achievement of sustainable development*”<sup>10</sup>. In this context the definition of sustainable development would have its common meaning of “*development that meets the needs of the present without compromising the ability of future generations to meet their own needs*”<sup>11</sup> rather than the more limited meaning which has subsequently been promulgated in the NPPF.
9. According to the Courts the meaning of sustainable development is not rigidly to be determined solely by reference to the NPPF methodology of Paragraph 14 and it is always subject to material considerations indicating otherwise.<sup>12</sup>
10. The NPPF presumption in favour of sustainable development is restricted as it further states that there is a presumption in favour “*unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole*” or “*specific policies in this Framework indicate development should be restricted*”<sup>13</sup>. With regard to the Local Plan both restrictions are applicable. The Local Plan does not adequately assess adverse impacts against national policy.

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<sup>7</sup> Epping Forest District Local Plan 1998 and Alternations 2006 (published 2008) Policy HC5

<sup>8</sup> Epping Forest District Local Plan 1998 and Alternations 2006 (published 2008)

<sup>9</sup> Wychavon District Council v SSCLG [2008] EWCA Civ 692

<sup>10</sup> Planning and Compulsory Purchase Act 2004, Section 39(2)

<sup>11</sup> The Brundtland Report 'Our Common Future', 1983

<sup>12</sup> Cheshire East BC v SSCLG & Renew Land Developments [2016] EWHC 571 (28)

<sup>13</sup> National Planning Policy Framework, 14

11. The Local Plan proposals to remove sites from Green Belt do not represent sustainable development as there are significant adverse impacts and there are conflicting policies in the NPPF that provide strong reason for restricting this development. The NPPF confirms that construction of new buildings of the type proposed in the Local Plan are inappropriate in the Green Belt<sup>14</sup>.
12. According to the NPPF Framework a sustainable development must achieve the following three dimensions: economic role, social role and environmental role. The NPPF states that these three objectives should not be pursued in isolation but interdependently and in mutually supportive ways<sup>15</sup>. This is not demonstrated by the evidence base of the Local Plan.
13. In addition to the above the following relevant cases should be considered which clarify that to assess the proposed Green Belt sites as a sustainable development in accordance with paragraph 11 of the NPPF would be subject to a successful legal challenge.
14. In the Cheshire East case Mr Justice Jay stated: *“if the adverse impacts do significantly and demonstrably outweigh the benefits (when assessed against the rest of the NPPF), then the proposal will not amount to sustainable development, and will be refused.”*<sup>16</sup>
15. Importantly, it is a matter of law that the proposed development must be found to be sustainable for there to be any presumption in favour of it: *“paragraph 14 NPPF only applies to a scheme which has been found to be sustainable development. It would be contrary to the fundamental principles of NPPF if the presumption in favour of development in paragraph 14 applied equally to sustainable and non-sustainable development.”*<sup>17</sup>
16. The Forest of Dean case covered the importance of considering the interaction between the then-current NPPF paragraph 14 (the presumption in favour of sustainable development) and other sections of the NPPF: *“I think that it is appropriate to give the word “restricted” in Limb 2 of paragraph 14 a relatively wide meaning, to cover any situation where the NPPF indicates a policy that cuts across the underlying presumption in favour of development. The alternative is impractical. It is not a sensible approach to the NPPF for everyone involved in a planning application to comb through each of the policies referred to in footnote 9<sup>18</sup>, to try and work out*

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<sup>14</sup> National Planning Policy Framework, paragraph 7

<sup>15</sup> National Planning Policy Framework, paragraph 8

<sup>16</sup> Cheshire East BC v SSCLG & Renew Land Developments [2016] EWHC 571 (26)

<sup>17</sup> William Davis Ltd v Secretary of State for Communities and Local Government [2013] EWHC 3058 (Admin)

<sup>18</sup> For example, those policies relating to sites protected under the Birds and Habitats Directives (see paragraph 119) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park (or the Broads Authority); designated heritage assets; and locations at risk of flooding or coastal erosion.

*which paragraphs under each policy heading could be said to be unarguably restrictive of development*"<sup>19</sup>.

**Issue 1: Are Policies P1-P15 justified, effective and consistent with national policy in the following general areas:** *1. Does Appendix 6: Site Specific Requirements, constitute policy or supporting text? If policy, is this clear? Is the wording within Part A of each policy P1- P15 sufficient to ensure that the site specific requirements contained in Appendix 6 can be enforced, or should Appendix 6 itself contain a policy?*

17. The Appendix 6 Site Specific Requirements for developers are generally not expressed as enforceable policy requirements. It is again useful to point to the WAL.E8 site as a typical example since a planning application has already been made after submission of the Local Plan. Despite the Local Plan containing requirements for junction improvement works the Next plc planning application does not offer any contributions.
18. The proposed WAL.E8 employment site is isolated and not served by public transport. This in conflict with the Local Plan policy on providing sustainable employment sites accessible by means other than the car.<sup>20</sup> The proposed WAL.E8 site is also not in accordance with the requirements of the NPPF to actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable.<sup>21</sup> In response to this constraint the only contribution offered by Next plc (in the form of a Section 106 agreement) is to provide limited sum as funding for an on-demand bus service for a maximum period of 2 years.<sup>22</sup>

**Issue 1: Are Policies P1-P15 justified, effective and consistent with national policy in the following general areas:** *2 Are all of the "Infrastructure Requirements" included within Policies P1-P15 intended to apply to every allocated site within each policy? Is this justified with reference to the tests in paragraph 204 of the NPPF?*

19. The requirement for contributions to Infrastructure Requirements are poorly drafted and not enforceable. The Local Plan states that contributions are required "*unless subsequent iterations of the Infrastructure Delivery Plan or discussions with providers determine that these items are no longer required*".<sup>23</sup> Developers would rely upon the wording of this exception to avoid paying contributions for Infrastructure Requirements.

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<sup>19</sup> Forest of Dean District Council [2016] EWHC 421 (Admin)

<sup>20</sup> Local Plan Submission version, para 4.162

<sup>21</sup> National Planning Policy Framework, 2012, paragraph 17

<sup>22</sup> Application EPF/1413/18, Quod Draft Section 106 Heads of Terms

<sup>23</sup> Local Plan Submission version, Policy P3, para H para 4.162

20. In addition to the above it is likely that developers would argue that the contribution requirements are not justified with reference to the tests in paragraph 204 of the NPPF.
21. The Appendix 6 Site Specific Requirements for developers are generally not expressed as enforceable policy requirements. It is again useful to point to the WAL.E8 site as an example since a planning application has already been made following submission of the Local Plan. Despite the Local Plan containing requirements for junction improvement works the Next plc planning application does not offer any contributions.