

MATTER 1

RESPONSES OF LOUGHTON TOWN COUNCIL ("LTC")

ISSUE 5

GENERALLY

1. The present response replaces LTC's original submissions, except for paragraphs 1 – 3 of those submissions.
2. The overarching question for the Inspector is this: what will happen to the Epping Forest SAC if this Plan is adopted and is that consistent with maintaining the favourable conservation status of the protected habitat and species?
3. The January 2019 HRA (EB 209) identified the pathways of impact¹ as disturbance from recreational activities including urbanisation, atmospheric pollution, water abstraction and water quality.
4. The HRA identified two material zones around the Forest, namely 6.2km from where 75% of the visitors surveyed arose and 3km from which almost all visitors in Epping Forest District lived.² Of the two allocated sites of concern to LTC, LOU R5 lies 1.2 km from the Forest and LOU R4 within 1.7km. According to the HRA³:
*"Since Epping Forest SAC is already known to be under pressure from high levels of recreation, additional recreational activity resulting from new residential development within 3km of the SAC.... would result in an adverse effect 'in combination' with growth in adjacent authorities...without mitigation."*⁴
5. As far as such additional recreational activities are concerned, paragraph 3.5 Of the HRA refers to the pressure on internationally designated sites caused by walkers

¹ Section 3, starting on p.23.

² Paragraph 5.17.

³ At paragraph 5.19.

⁴ See also the table detailing the likely significant effects of Policy P2 (page 67) and the likely significant effects (recreational pressure and urbanisation) of R4 and R5 (page 99).

with dogs. The recent visitor survey (EB 715) found that 49% of those interviewed were dog walkers.⁵ Similarly, 45% of those asked in the Jessel Green survey were dog walkers.⁶ It seems reasonable to conclude therefore that loss of open space at Jessel Green is likely to contribute to an increase in the numbers of dog walkers using the Forest.

Avoidance

6. There is a fundamental contradiction in the Plan. On one hand, there is a recognition in the HRA that housing development within a 3km radius of the Forest will give rise to increased recreational pressures and urbanisation: on the other, the Plan envisages the removal of 4.01ha of established and well used open space at Jessel Green, thus ensuring that some of those who presently use that open space and the future residents of the housing development planned there will use the Forest for dog walking and other recreational purposes. In short, the Council seeks to facilitate the development of a green infrastructure network, while simultaneously removing part of that network.
7. Given that residential development on R5, and to a lesser extent R4, would inevitably lead to significant effects on the Forest by way of recreational pressure and urbanisation arising both from some of the present users of Jessel Green and the future residents, it is extremely surprising that the HRA did not first consider avoidance and so recommend deletion of that allocation from the Plan. After all, avoidance is the most certain method of ensuring that adverse effects on the integrity of the SAC (coherence of structure and function) will not occur. According to the 2019 HRA itself: *"the plan should be altered until adverse effects are cancelled out fully."*⁷
8. Having first identified the relevant significant effects, the author of the HRA then proceeded to consider only mitigation. Avoidance was neither considered nor specifically discussed. In the submission of LTC that was a fundamentally

⁵ Paragraph 3.10, page 22.

⁶ See appendix 2 to the Reg 19 submissions of Loughton Residents Association.

⁷ See page 10, Fig 1 HRA Task 3

erroneous approach. Avoidance should be the first step in the process. It should not be ignored altogether.

9. LTC suggests that the late drafting and publication of the January 2019 HRA inevitably constrained the findings and recommendations that it was able to make, including any recommendation relating to avoidance: see further below.
10. The only oblique reference to avoidance as far as the Loughton allocations are concerned is at paragraph 5.30⁸:

“It should be noted that the following site allocations (also located within 3km of Epping Forest SAC) could result in the loss of areas of existing green infrastructure that are used for recreational activities. The presence of these green areas is likely to divert a level of recreational activity away from the SAC, as such the loss of these green areas, could result in an increase in recreational pressure upon the SAC, which is then compounded by the provision of an increase in net new dwellings. The sites are as follows:

▪ *SR-0361 (LOU.R5) which from review of aerial mapping appears to comprise existing open amenity green space (Jessel Green)*”

11. Final site selection preceded the publication of the latest HRA. Although, as set out above, the HRA made oblique criticism of the allocation of Jessel Green for housing development in the Plan, its removal was not recommended by the HRA, presumably because there was no mechanism to remove an allocation at that stage, namely after the submission to the Secretary of State of the Regulation 19 draft and indeed after the appointment of the Inspector to conduct the hearings.

Mitigation suggested in the HRA

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There is also a similar passage at paragraph 5.2.

12. In the submission of LTC, it is questionable whether what the HRA appears to regard as mitigating measures are really mitigating measures, in the sense of being a complete solution to the problems identified.

(i) Alternative green spaces

13. Neither LOU R4 nor R5 is one of the four sites that would specifically be required by the Plan to deliver large areas of nearby accessible green space with a view to making those developments as recreationally self-sufficient as possible⁹. However, the HRA calls out a number of policies from the Plan that “*could result in a reduction in recreational pressure and urbanisation*”¹⁰. It would appear from some of those policies that it is highly likely that the Loughton allocations, including R5, will be required to provide SANGs. Thus:

- Policy DM2D provides that, for additional development in the District potentially having adverse effects on the Forest, the Council could require the provision of new green spaces.
- Policy DM5 requires development proposals to demonstrate that they have been designed to incorporate appropriate provision of new green assets.
- Policy DM6 prohibits building upon existing open space unless, inter alia, the loss would be replaced by equivalent or better provision in terms of quantity or quality in a suitable location.
- Policy DM10 requires development proposals to include enhanced provision of green infrastructure.
- Policy SP7 provides that the Council will seek the provision of new quality green space appropriate to the scale of development¹¹.

14. The problem with the provision of SANGs is that they are neither quantified nor is the location of any appropriate open space identified either in the Plan itself or in

⁹ Paragraph 5.22.

¹⁰ Paragraph 5.3. Note the word “*could*”.

¹¹ As regards scale of development, the Thames Basin Heaths SPA SPD requires bespoke SANGs for developments over 109 dwellings. LTC is concerned that a similar scale would be applied by the Council.

the Interim SAMMS. As the City of London suggests, it is not a given that there is sufficient greenspace that could be improved or provided as new sites. That problem was neither identified nor addressed in the HRA, when it manifestly should have been. The benefits of such provision are therefore impossible to foresee with the required degree of certainty. The Inspector must be in a position to “consider secured mitigation and evidence about its effectiveness”.¹²

15. **In any event, it is a bizarre exercise in future planning to require the provision of SANGs while at the same time allocating for development well-used and well-established open space at Jessel Green.**

(ii) Financial contribution to access management.¹³

16. The provisions in the Plan itself relating to financial contribution to access management and monitoring of visitors to the Epping Forest SAC in Policy DM2C are somewhat opaque and lack specificity. Nor is there any provision in the Plan referring to a future SPD setting out in detail a future final mitigation strategy that would incorporate details of such financial contribution.

17. Further mitigation detail is provided in the Interim SAMMS [EB 134] but:

(a) As to Strand 1a & 1b:

- The “mitigation measures” are not incorporated into the Plan.
- There is no evidence that they would avoid or materially and significantly reduce the adverse effects of the Plan on the integrity of the SAC, particularly by way of increased recreational pressure or urbanisation.
- The Strategy is not final, only interim.
- Many of the suggested measures would not be immediately implemented but only at a future date and when appropriate financing has been obtained.

¹² **R (Langdon) v SEFRA** [2018] EWHC 2190 (Admin) 95 (underlining added).
¹³ Para 5.26 referring to Policy DM2C.

- (b) As to Strand 2, the suggested measures are simply evidence gathering, rather than mitigating measures.

(iii) **Atmospheric pollution**

18. LTC notes the conclusion in the HRA at paragraph 6.24 that there is likely to be a reduction of nitrogen deposition rates on almost all modelled transects except transect N, but an increase in ammonia concentrations. LTC is not persuaded that such conclusions are robust, given that they are based on the very optimistic assumptions underlying modelled scenario DS5, namely *“an estimate for the air quality benefits of the sustainable transport and non-physical air quality interventions in EFLP, notably Policy T1, the revised stringent Parking Standards, the requirement for electric vehicle charging within all new developments, public transport improvements and promotion of high-speed broadband.”*¹⁴ (Underlining added).
19. A much less rosy picture is presented with modelled scenario DS2, which could be regarded as a worst-case scenario.¹⁵ In the view of LTC, the problem is that no strategic proposals have been advanced in the HRA to avoid or mitigate the effects of this scenario. Instead, its approach appears to be that any future pollution problems that arise can be addressed at the planning permission stage, relying largely upon Policy DM22.

(iv) **Conclusion**

¹⁴ Page 15.

¹⁵ Pages 127 and following.

20. LTC regards the current mitigation strategy as little more than a very small step in the right direction and suggests that the Inspector ought to be cautious before concluding that the Plan will not adversely affect the integrity of the SAC.

QUESTION 1

21. LTC is satisfied that the flaw identified in the original HRA has now been rectified and that the HRA process, as set out in the January 2019 HRA (EB209), is consistent with the latest judgments of the ECJ, notwithstanding that LTC disagrees with the overall assessments in the HRA.

QUESTION 2

22. (a) n/a.
23. (b) n/a.
24. (c) Increasing the ZOI would not affect the Loughton allocations given their proximity to the Forest and the fact that Policy P2 and all the Loughton housing site allocations have been appropriately screened in. The Loughton employment site allocations have not been screened in. Nor is it suggested that they should be.
25. (d) No, see LTC's submissions above under the heading "Generally".
26. (e) No. Avoidance of harm, as distinct from mitigation, has not been considered as far as LOU R4 or R5 are concerned. It should have been considered: see LTC's submissions above under the heading "Generally". The Inspector is respectfully reminded that:
- "it is only when it is sufficiently certain that a measure will make an effective contribution to avoiding harm, guaranteeing beyond all reasonable doubt that the*

project will not adversely affect the integrity of the area, that such a measure may be taken into consideration when the appropriate assessment is carried out.”¹⁶

27. (f) It is accepted that it is inevitable that there will be some deferral to the planning application stage of the implications of allocated sites on the SAC. However, in the submission of LTC the correct balance between measures to avoid the identified harm at the plan-making stage and such measures at the planning application stage has not been struck in the Plan. Specifically, as the Inspector herself identifies, there is no SANG strategy in the Plan. Nor is there any provision referring to the incorporation of any mitigation strategy in an SPD.
28. (g) No. It is of concern to LTC that there is still no final mitigation strategy and, at present, no provision referring to the incorporation of any such mitigation strategy in an SPD. The deficiencies in the present Interim Strategy are correctly identified on page 2 of the City of London’s letter of 14th September 2018 to Cllr John Philip. The Inspector is apparently expected to assume that the signatories to the MoU will be able to agree a final strategy and that such final strategy will be effective. As the decision-maker, it is for the Inspector to be satisfied that any mitigation strategy will ensure that the provisions of the Plan will not adversely affect the integrity of the SAC. It is difficult to see how the Inspector can be satisfied without a final mitigation strategy before her.
29. (h) n/a.
30. (i) Any land-take for a Wake Arms Roundabout enlargement would ipso facto damage the SAC.
31. (j) (i) Yes.
32. (j) (ii) It is submitted that the final mitigation strategy should be agreed and placed before the Inspector before she makes her final determination. Absent a final

¹⁶ **Grace v An Bord Pleanála** [2018] Env LR 37 at [51].

mitigation strategy, there must be some mechanism for ensuring that any future development complies with a future final mitigation strategy.

33. (j) (iii) LTC supports the amendments to Policy DM2 B -D proposed by the City of London in its Regulation 19 response.

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