

EPHING FOREST DISTRICT LOCAL PLAN EXAMINATION
RESPONSE TO INSPECTOR'S ADVICE DATED 2 AUGUST 2019

Dear Mrs Philips

**Re: Epping Forest District Local Plan (2011-2033) Examination
Inspector's Advice following hearings dated 2 August 2019**

1. Thank you for your note dated 2 August 2019 and your comprehensive and helpful advice following completion of the examination hearings on 11 June 2019. The Council is particularly grateful for the pragmatic and constructive approach you have adopted to date, recognising the importance of having an up to date Local Plan in place and the magnitude of the undertaking to progress to this stage.
2. We understand that, necessarily, the advice in your note is provided without prejudice to the conclusions that you may ultimately reach in your forthcoming final report on the Examination and, to that extent, we accept that your advice to date is based upon your interim findings on the matters and issues that were discussed during the hearing sessions. The Council also recognises that your note focuses on the areas where you have "misgivings" and that your final report will address all issues of soundness.
3. Without prejudice to those observations and the conclusions that you might ultimately reach, the Council understands that your note has identified the areas where further MMs are required and the cases where additional work will need to be done by the Council to establish their precise form. Subject to the implications of that additional work and the representations made in response to public consultation on MMs in due course, the Council draws the reasonable inference that, at this stage, you do not harbour any "misgivings" about areas that are not mentioned in your note because it is not your intention to reopen the hearings into those matters.
4. As you would expect, with the assistance of its professional advisors, the Council has considered your advice and its implications carefully. Regrettably, given the time of year, that process has taken slightly longer than expected but was necessary to identify the nature and scope of the additional work to be done by the Council to establish the precise form of the Main Modifications (MMs) required to remedy issues of soundness and to allow for consultation with Natural England on the proposed

scope of work in relation to the actions you identified with respect to the Habitats Regulations Assessment.

5. This letter comprises the Council's initial response to your post-hearings advice (ED98) and, as requested, provides an outline of the Council's proposals for progressing the work necessary to finalise the MMs and an indicative timetable to assist with programming the remainder of the examination.
6. For the avoidance of doubt, having considered the matter carefully, the Council confirms that in its view the issues of soundness identified in your advice can be addressed through the MMs process. At this stage, there is no reason to doubt that the Epping Forest District Local Plan (2011-2033) – Submission Version, December 2017 ("LPSV"), as modified, could be recommended for adoption within a reasonable period.

Request for clarification

7. Before addressing the Council's proposals regarding the programme of additional work, in response to your invitation, we would be very grateful to receive further clarification on an important matter addressed in your advice, namely, the inclusion of the requirement in LPSV Policy DM 10 (Housing quality and design) for all new homes to meet the Nationally Described Space Standards ("NDSS").
8. Paragraphs [64] to [66] of your note addresses Policy DM 10 (Housing Design and Quality); specifically, the requirement in Part A for all new market and affordable homes to meet the optional Nationally Described (minimum internal) Space Standard ("NDSS"). Your advice confirms (at [65]) that the Council's Stage 2 Viability Study (EB301) has taken account of the costs of these standards and that imposing them would not put the implementation of the Plan at serious risk.
9. However, for the reasons stated (at [66]), you have advised the Council that the requirement in Part A of Policy DM 10 for all new homes to meet the NDSS is not justified and should be deleted. There are three components to your reasons:
 - (a) The analysis within document ED54 is based on a sample of major schemes (10 homes or more) only, permitted between 2013-2017;
 - (b) No evidence is presented in respect of housing delivered on smaller sites during the same period, or about the size of dwellings in the existing housing stock; and

- (c) Nor is any information provided as to whether the size of dwellings currently available in the District is causing particular difficulties.
10. To ensure that we understand your analysis correctly, we would be grateful if you would consider the observations set out below, which respond to each of your three concerns about the adequacy of the Council's evidence.
11. Before doing so, it is helpful to refer to relevant passages within the Secretary of State's Planning Practice Guidance ("PPG") concerning 'Housing: optional technical standards'¹. Under the heading 'Introduction', paragraph 001 explains that:
- "The government has created a new approach for the setting of technical standards for new housing. This rationalises the many differing existing standards into a simpler, streamlined system which will reduce burdens and help bring forward much needed new homes. The government set out its policy on the application of these standards in decision taking and plan making in a written ministerial statement,^[2] ..."*
12. The PPG makes clear at paragraph 002 that:
- "Local planning authorities have the option to set additional technical requirements exceeding the minimum standards required by Building Regulations in respect of access and water, and an optional nationally described space standard. Local planning authorities will need to gather evidence to determine whether there is a need for additional standards in their area, and justify setting appropriate policies in their Local Plans. ..."*
13. Having regard to the Secretary of State's written ministerial statement dated 15 March 2015 ("the WMS"), the Council accepts that reference to "additional standards" (in paragraph 002) includes the optional NDSS.
14. The PPG addresses 'Internal space standards' and the optional NDSS (in paras. 18 to -020), which state (so far as relevant):
- "Can local planning authorities require internal space standards in new homes?"*
- The National Planning Policy Framework says that local planning authorities should identify the size, type, tenure and range of housing that is required in particular locations, reflecting local demand.*

¹ [PPG \(Ref. ID: 56\): 'Housing: optional technical standards' \(DCLG, 27 March 2015\)](#)

² <https://www.gov.uk/government/speeches/planning-update-march-2015>

Where a local planning authority [...] wishes to require an internal space standard, they should only do so by reference in their Local Plan to the nationally described space standard." (Paragraph: 018)³

and

"How should local planning authorities establish a need for internal space standards?

Where a need for internal space standards is identified, local planning authorities should provide justification for requiring internal space policies. Local planning authorities should take account of the following areas:

- *need - evidence should be provided on the size and type of dwellings currently being built in the area, to ensure the impacts of adopting space standards can be properly assessed, for example, to consider any potential impact on meeting demand for starter homes.*

[...]

- *timing - there may need to be a reasonable transitional period following adoption of a new policy on space standards to enable developers to factor the cost of space standards into future land acquisitions."⁴ (Paragraph: 020, with emphasis)*

(i) Evidence base

15. Whilst it is correct to state the analysis within the Council's Homework Note 19 (ED54) is based upon major schemes only, it is important to note the evidence provided in Homework Note 19 included the measurement of 643 dwellings across all 18 major planning permissions granted in the District in this period, and that this represents over a quarter of all dwellings approved between 2013-2017. That being said, we readily acknowledge that paragraph 7 of ED54 erroneously referred to the 18 developments reviewed as a "sample". To be clear, those 18 developments represented all major schemes permitted in the stated period rather than just a sample of major schemes.
16. The Council considers that the methodology utilised and number of dwellings measured demonstrates a need for a Local Plan policy requiring new homes to meet a minimum size standard and, as such, provides a justification based on proportionate evidence, in accordance with PPG guidance. Major schemes were utilised to demonstrate a need and to justify the use of NDSS as, in the Council's

³ Reference ID: 56-018-20150327

⁴ Reference ID: 56-020-20150327

experience, it is larger developments where residential space standards are generally squeezed to maximise dwelling numbers on individual plots.

17. That being said, it is for the plan-making authority to decide the nature and scope of the evidence required to inform the preparation of its Local Plan and, as a matter of law and policy, the proper allocation of scarce public resources, quintessentially, is a matter for the democratically elected Members of the local planning authority, subject to relevant administrative and judicial supervisory jurisdictions. As such, the proportionality of the local plan evidence base, primarily, is a matter for the judgment of the plan-making authority, subject to the jurisdiction of the person appointed to examine the submitted local plan who must decide whether, in all the circumstances, it would be reasonable to conclude that Local Plan strategy is justified based upon proportionate evidence.
18. Consistent with national policy concerning plan-making in the 2012 Framework, the PPG does not prescribe the nature and scope of evidence required to justify the use of the NDSS. Consequently, whether the imposition of the NDSS in local plan policy is justified will be a matter for the judgment of the Inspector examining a submitted Local Plan, applying the four-part test of soundness within paragraph 156 of the 2012 Framework.
19. In the circumstances, the Council is concerned to ensure that the evidential standard being applied is not unjustifiably onerous. In that respect the Council has considered two recent examples of Local Plans where the inclusion of a requirement to meet the NDSS was found to be justified. In both cases, the evidence justifying the need for a NDSS policy requirement was substantially less thorough than the evidence upon which the Council relies.
20. The two examples, which relate to LPAs close to Epping Forest District, have recently included reference within newly prepared Local Plans for all new homes to meet the NDSS:
 - (a) South Cambridgeshire Local Plan (adopted September 2018) - Policy H/12; and
 - (b) Chelmsford Draft Local Plan (January 2018) – Policy MP4 and Appendix A. ⁵

⁵ The Council's understanding is Chelmsford BC's draft Local Plan has reached the stage of consultation on proposed MMs, which closed on 19 September 2019 and the programme is to approve the plan in late 2019.

Both include the minimum gross internal floor areas and storage for new dwellings (Table 1) under technical requirement part (a) of the PPG. Both Local Plans also include the remaining internal technical standards included in the PPG (parts b - i). In both cases, the evidence demonstrating the need for NDSS was less compelling than the evidence upon which the Council relies. (We will be pleased to provide additional information about these Plans should that be necessary.)

(ii) Housing on small sites

21. It is not strictly correct to state that no evidence is presented in respect of housing delivered on smaller sites during the same period. Whilst we accept that the comprehensive analysis within document ED54 did not include schemes of fewer than 10 new homes, the Council's hearing statement for Matter 16 and document ED54 both reported the recent experience of the Council's development management officers.
22. We also relied upon a recent appeal decision to demonstrate the appropriateness of applying the NDSS locally. Whilst the Council managed to persuade the Inspector to apply and accord significant weight to the NDSS, government policy and guidance is clear that the application of the NDSS must be justified through the plan-making process. As such, it is most unlikely that the Council will succeed in any similar attempt to rely upon the NDSS if our Local Plan is adopted without this requirement.
23. Having demonstrated a need to ensure that new homes are designed and built to a minimum acceptable quality standard, which has been endorsed by government since 2015, we respectfully disagree that current government policy or practice guidance requires the Council to meet the onerous evidential standard you appear to have applied.
24. Moreover, the Council rejects the suggestion that the state of the existing housing stock in the District is a relevant consideration when determining whether the Council has demonstrated a need to impose a requirement for all new homes to meet the NDSS. Even if we are wrong about that, in the circumstances, it would be disproportionate to expect the Council to survey the existing housing stock in the District for this purpose.

(iii) Existing particular difficulties

25. With respect, we fail to understand why it is considered necessary to provide information as to whether the size of dwellings currently available in the District is

causing particular difficulties. Government policy and practice guidance does not require a local planning authority to demonstrate the existence of difficulties locally and would interpret your comments in this context as requiring evidence of a specific problem or risk associated with not setting optional internal space standards in the District.

26. Whilst we fully accept that the use of the NDSS must be justified by a clearly evidenced need, we are not clear that national planning policy and the PPG requires a LPA to justify the use of NDSS in the prescriptive manner suggested.

The clarification sought

27. Against that background, we are very concerned to understand how the Council can ensure that the new homes to be delivered by the Plan are designed and built, at the very least, to a minimum standard, when compelling evidence exists to demonstrate that the market will not do so. Also, as the impact of the optional technical standards within Policy DM 10 on viability has been considered satisfactorily, we do not understand why the scale of the development scheme should determine whether future residents of new homes in the District will be deprived of a decent standard of accommodation
28. Put simply, the government does not prescribe the standard of evidence required to demonstrate a need to impose minimum internal space standards but it does prescribe the standards that may be utilised and the mechanism for their imposition locally. We readily accept that the Council must persuade you that, in the circumstances, the NDSS policy requirement is consistent with relevant national policy and justified by proportionate evidence and, to date, we have not managed to do so.
29. Accordingly, we would be grateful for clarification of the evidential standard you have applied; the source of that standard in government planning policy and/or guidance; the considerations that informed your interim findings; and whether, in the circumstances, you would be prepared to revisit this matter taking account of the considerations set out above. If so, the Council would welcome the opportunity to reconsider the evidence presented in Homework Note 19 and supplement that evidence to address the matters set out above.
30. In that regard, would you please clarify whether the evidence provided by the Council in Homework Note 19 (ED54) should include additional evidence to better articulate the justification for inclusion of the NDSS. If so, it would be helpful to

receive your guidance on what you consider to be a 'proportionate approach' to evidencing local need for optional internal space standards and whether it is necessary to bolster the technical evidence base to include a sample of internal measurements of small scale applications in the District.

Next steps

31. The main area of work which has required careful consideration is the most efficient and expedient way to progress the actions in relation to the **Habitats Regulations Assessment** taking on board the issues raised with respect to the need for modelling to take account of tall forest vegetation; to look again at the causal link between the mitigation measures proposed and the modelling effects shown in the HRA 2019; and to provide evidence to demonstrate the effects on the Forest would not be significant.
32. These are the identified actions which require additional work with the greatest impact on the programme of work. Set out below is an indicative programme to undertake the work and thus to finalise the main modifications for public consultation. Subject to any comments on the proposed timescale and proposed work this will then be used to develop a full programme of work including the critical path. The Council has consulted Natural England on these proposals which have been adjusted to take account of the feedback received to date. The Council and NE have agreed to schedule regular fortnightly meetings/telephone conferences to maximise the effectiveness of communication and co-operation required to complete the programme of additional work. The Council has impressed upon NE the importance of ensuring that adequate resources are available to avoid delays to the proposed work programme.
33. We are pleased to report that **ACTION 3: To update the HRA modelling to take account of "tall vegetation"** has been completed. The Council's consultants and authors of the 2019 HRA (EB209), AECOM Infrastructure and Environment Ltd ("AECOM"), have undertaken this work and advise that, since this concerns the deposition velocity of nitrogen (rather than pollutant emissions), the respective data for NO_x and ammonia concentrations are unchanged by updating the HRA modelling as requested. A given amount of NO_x or ammonia translates to a greater nitrogen deposition using the forest velocity than they do using the velocity for short vegetation.

34. Equally, however, mitigating a given amount of NO_x or ammonia would have a commensurately greater reducing effect on nitrogen deposition rates using the forest deposition velocity than it does using the short vegetation deposition velocity. So, the difference in using the forest deposition velocity is essentially interpretive. In summary, changing the deposition velocity doesn't change the patterns for nitrogen deposition, but it increases all the deposition rates such that they fall less steeply.
35. In relation to **ACTIONS 4 and 5**, with the assistance of its expert environmental and traffic consultants, the Council has undertaken a scoping exercise for the additional work required to produce the evidence necessary to enable the Council to conclude beyond reasonable scientific doubt that adopting the Plan, with MMs as recommended in your final report, will not adversely affect the integrity of the SAC. In that regard, we respectfully remind you that the Council is the 'competent authority' under Part 6 of the Habitats Regulations and, ultimately, the Council must ascertain whether adopting the Plan would not adversely affect the integrity of the SAC.
36. We are duty-bound to assist you to carry out the examination of the Plan lawfully and trust that you will understand why we take this opportunity to clearly state the Council's position on the relevant legal framework, which we do not understand to be controversial. We do so without any criticism and recognising that, at the HRA hearing session on 21 May 2019, all parties agreed that, in this context, that sufficient 'certainty' means beyond reasonable scientific doubt that the Plan will not adversely affect the integrity of the SAC.
37. Under Regulation 63 of the Habitats Regulations, the Council bears the duty to make a lawful appropriate assessment of the Plan and, having regard to the conclusions of that assessment, adopt the Plan (with MMs) only after having ascertained that it will not adversely affect the integrity of the SAC. Whereas, under section 20 of the 2004 Act, having carried out the examination, it is the responsibility of the person appointed to decide whether, in all the circumstances, it would be reasonable to conclude that the Plan (with MMs as recommended) is sound. Shortly stated, having regard to the HRA, you must decide whether it would be reasonable to conclude, as a matter of soundness, for the Council to adopt the Plan (with MMs). This distinction is not merely semantic; as it would be reasonable as a matter of law, for the Council and yourself to disagree upon whether adopting the Plan (with MMs) would not adversely affect the integrity of the SAC.

38. Having made those observations, we set out below the results of our scoping exercise and the Council's proposals for the programme of additional work required and the indicative timescale for each component of work:

(a) We are proposing to rerun the traffic and air quality modelling (using the tall/forest deposition velocity rates in relation to Scenario DS2 (local plan development with no mitigation) taking account of the MMs proposed in relation to sites LOU.R5, LOU.R14, CHIG.R6, ROYD.R3, WAL.R5, CHIG.R11 and NAZE.R2 and a reduced capacity for EPP.R1/R2. This approach will provide a new baseline of the effect on the air quality modelling outputs arising from the removal or changes in capacity of sites arising from your advice issued on 2 August 2019 or from clarifications provided by the Council in Homework Note 24 (ED90A and ED90B. This will also assist in considering Action 5 and will provide a new basis from which to consider the effects of refining elements of the air quality modelling methodology (further details are set out in paragraph 4 below).

[To be completed by late November 2019]

(b) The above will also serve to provide a clearer understanding of the potential length of retardation on individual transects and provide for an opportunity to indicate the absence or otherwise of interest features in relation to Action 4. The consultants have advised that the task in relation to ACTION 4 will be undertaken, in so far as a ground-truthing exercise can confirm whether SAC interest features are present at relevant locations on the transects. However, it has not yet been possible for the scientific community to devise the necessary predictive tools to quantify the botanical effects of a given nitrogen dose on a given woodland, partly due to the strong confounding influence that tree canopy structure (and its role intercepting light and rainfall) places on ground flora species richness, cover and other parameters that might illustrate the influence of nitrogen deposition. As such, robust metrics to quantify the amount of botanical change in a woodland expected from a given nitrogen dose do not exist. For this reason, the focus of the original assessment was on minimising pollutant emissions compared to the future baseline. Reducing emissions will therefore be the primary focus of the further work'.

(c) Whilst the initial light touch rerun set out in point 1 above is undertaken a review of the Vehicle Fleet mix will be undertaken using the April 2017

Automatic Number Plate Recognition (ANPR) data collected and comparing this with the 2017 Defra Emissions Factor Toolkit (EFT) used for the HRA 2019 air quality modelling work. This would provide a more locally based understanding of the Vehicle Fleet mix of traffic using EFSAC roads. This more bespoke understanding could provide a more 'scientifically certain' baseline for both future monitoring but also reflect the fact that the EFT used in the HRA 2019 was for 'rural roads' which does not take into account either electric or low-emission vehicles. In addition a comparison between the 2017 and 2019 Defra EFT would also be undertaken to understand any national trends in relation to the switch from diesel cars to petrol cars and also the proportion of Euro Standard 6 vehicles.

- (d) To understand the current position additional ANPR surveys would be undertaken in October 2019 on dates to avoid the half term holidays. This would provide the most up-to-date bespoke Vehicle Fleet mix for traffic using EFSAC roads and provide an initial starting point for monitoring a forward trajectory for future changes.
- (e) The Council has discussed these proposals with NE's representatives who have raised a number of queries that will be discussed further at a technical meeting to be scheduled in early November.

[Commissioning of ANPR surveys - Immediate; and completion of ANPR surveys - during October; comparison of Defra EFT version 9 with version 8 and with EFSAC-specific 2017 ANPR data -- late November 2019]

- (f) Concurrent with the above tasks the following methodological updates and reviews to update the approach for the further air quality assessment work will be undertaken:
 - (i) Use of latest Defra tools, including Emission Factor Toolkit (EFT) for NO_x emission rates (currently EFT v9.0);
 - (ii) Use of latest data from the Air Pollution Information System (APIS);
 - (iii) Use of local monitoring data (May 2018 - Feb 2019) to inform the air quality modelling assessment;
 - (iv) Review of current guidance and research documents which may influence the HRA air quality modelling methodology (e.g. Defra Trends Report 2019: Trends in critical load and critical level

exceedances in the UK; IAQM & CIEEM: A guide to navigating the assessment of air quality effects on designated sites);

- (v) Review of NAEI ammonia road traffic emission factors and their application in the air quality model;
- (vi) Review of appropriateness of queuing methodology (in terms of modelled queue length and estimation of emissions of NO_x and NH₃ from queuing traffic);
- (vii) Review of ANPR (Automatic Number Plate Recognition) data to define the current and projected local vehicle fleet.

[Consideration of proposed amendments to the methodology including discussions with Natural England and reaching agreement to changes to traffic and air quality methodology - mid December 2019]

- (g) Assuming Natural England's agreement to the methodology is secured by mid-December, the intention would then be to undertake the transport modelling of scenarios (at this point the final changes to sites and their capacity would need to have been agreed)

[Agreement of scenarios to be tested and final changes to sites/capacity by mid-November with transport modelling to be completed by the end of January 2019]

- (h) Following the completion of the transport modelling air quality modelling of the scenarios to be tested

[Commence at the beginning of February 2020 with completion (including analysis of outputs) by mid-March 2020]

- (i) Finalise updated draft Air Quality Mitigation Strategy in conjunction with Natural England and draft Proposed Main Modifications for agreement with Inspector; and

[Completion by mid-April 2020]

- (j) Undertake HRA/SA of Main Modifications

[Completion mid-May 2020]

39. It should be noted that this is an ambitious but we hope realistic timescale to undertake the additional work and, as stated above, assumes that there is no requirement to make further consequential changes to the LPSV (e.g., to remove additional site allocations or to make significant changes to the development capacity of existing allocations). It is however reliant on input from other bodies to be able to deliver - including DVLA and Natural England.
40. We will be holding regular monthly meetings with our consultants and programme meetings on a fortnightly basis to ensure that the programme is delivered on time and will be happy to give regular updates on progress. As such our intention would be to keep you fully informed about the progress of the additional work and any implications for the overall work programme on a monthly basis.
41. We would be grateful if you could provide feedback on our proposed programme of additional work to address the actions identified in your letter (primarily Actions 4 and 5) and that, as far as you can ascertain from the information provided, that it is likely to provide the necessary outputs for you to agree any proposed Main Modifications to the Plan.

We look forward to hearing from you

Yours sincerely

A handwritten signature in black ink that reads "Alison Blom-Cooper". The signature is written in a cursive, slightly slanted style.

Alison Blom-Cooper